

IN THE SUPERIOR COURT OF WALKER COUNTY
STATE OF GEORGIA

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

**MOTION TO EXAMINE AUDIO AND VIDEO EVIDENCE, TO
EXAMINE TRANSCRIPTS FOR ACCURACY, AND TO PREPARE
TRANSCRIPTS ON DEFENDANT'S BEHALF**

COMES NOW the Defendant, through counsel, and files this motion to examine any audio and video taped evidence, to examine any transcripts of the same for accuracy, and to prepare transcripts on the defendant's behalf.

This motion is made pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and Article I, Section I, Paragraphs I, II, XII, and XIV of the Constitution of the State of Georgia.

Sound and video recordings are admissible only if a proper foundation is established. It must be shown that (1) the mechanical transaction device was capable of taking testimony, (2) that the operator of the device was competent to operate it, (3) it is authentic and correct, (4) no changes, additions, or deletions have been made, (5) the record was preserved and the manner in which it was preserved, (6) speakers are identified and, (7) the testimony elicited was freely and voluntarily made, without any kind of duress. Eiland v. State, 130 Ga. App. 428, 203 S.E.2d 619 (1973); Allen v. State, 146 Ga. App. 815, 247 S.E.2d 540 (1978).

If the recording is inaudible its admissibility should be questioned. If material portions are inaudible, the recording should be rejected. Kelly v. State, 168 Ga. App. 911, 311 S.E.2d 180 (1983), relying on Mayor of Savannah v. Palmerio, 135 Ga. Appl 147, 217 S.E.2d 430 (1975).

The defendant, after reviewing the aforementioned evidence, reserves the right to seek a hearing, either pre-trial or outside the presence of the jury, if any objections are warranted. Lynch

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Clerk

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v. State, 143 Ga. App. 188, 238 S.E.2d 122 (1977).

The defendant objects to the use of any transcript of the recorded conversations or events before the jury as the best evidence of the conversations or events is the memorialization contained on the tape(s). The defendant particularly objects in the event that he has not been afforded an opportunity to verify the accuracy of the transcripts.

Finally, the defendant requests the right to listen to the tape(s) and to prepare transcripts.

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



McCracken Poston
Attorney for Tommy Ray-Brent Marsh
GB 585606

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



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