

IN THE SUPERIOR COURT OF WALKER COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

TOMMY RAY BRENT MARSH,

Defendant.

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CRIMINAL ACTION FILE
NO.s: 03-CR-20884; 03-CR-20885;
03-CR-20886; & 03-CR-20887

ORDER

On November 18, 2003, this Court heard oral arguments from the Defense and the State regarding Defendant's motion entitled APPLICATION FOR INDIGENCY AND CERTIFICATE OF FINANCIAL RESOURCES. Walker County District Attorney Herbert E. Franklin and Assistant District Attorney Chris Arnt appeared on behalf of the State. Appearing with Defendant were attorneys McCracken Poston and Ron Cordova.

Specifically, Defendant has asked the Court for funds to hire expert witnesses of his choosing. Defendant informed the Court that he is NOT seeking funds to pay for either of his attorneys. During the course of the hearing, the Court heard testimony from Frank Jenkins, Defendant's attorney in the civil suits arising out the same facts and circumstances as the instant case. Mr. Jenkins was retained to represent Defendant by Defendant's insurance carrier and he testified that he is not receiving any funds or payments from Defendant. Mr. Jenkins also testified that he cannot share any of the information he receives from the expert witnesses used in the civil cases as it may breach confidentiality privileges. In addition, Defendant testified before the Court about his current financial status.

At the conclusion of the hearing, the Court asked Defendant to complete an "Application for Court Appointed Counsel" that is used by the Cobb County Circuit

Defender program. The Court stated that upon completion of the application, the application in conjunction with a transcript of the hearing, would be forwarded to Gary Pairan, Administrator of the Cobb County Circuit Defender's Office. The Court informed both parties that this is the practice utilized in Cobb County and the practice the Court would use in this case.

The Court believes that reliance on the practices used in Cobb County comport with the purposes of this case. Mr. Pairan has been the Administrator of the Cobb County program for thirteen (13) years. During his tenure, he has received the Liberty Bell Award from the Cobb County Bar Association and was recently recognized by the Indigency Defense Counsel for his achievements.

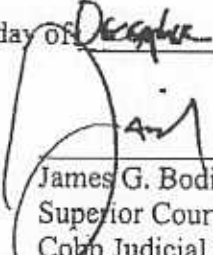
The guidelines relied on for the determination of indigency are the published "Guidelines of the Georgia Supreme Court for the Operation of Local Indigent Defense Programs." The Court notes that these guidelines were established to determine eligibility for a court appointed attorney, not specifically for funds for expert witnesses. As Georgia has not set any guidelines specifically for expert witness funds, the Court is utilizing the only guidelines available, which is for attorneys.

Eligibility is found if the accused's net income falls below the Poverty Guidelines established by the United States Department of Department of Health and Human Services. In addition, deductions are made for any court ordered expenses (i.e., monitor costs) and *may* be made for costs associated with child care and medical costs. Based on Defendant's application, Mr. Pairan determined Defendant's net income and, thereafter, deducted from this figure the following four (4) costs: the cost of house arrest monitor; cost for certified mail fee regarding monitor; monthly child care cost; and two separate monthly medical payments. The Court notes the monthly costs associated with child care

and medical costs are not required to be deducted and, moreover, Defendant testified that he is available to care for his child as he is not employed. Defendant went on to explain that the purpose for his child attending outside child care is for socialization opportunities. The income after deductions was compared with the federal poverty guideline for a "Family Unit of 3."

Defendant's income was more than \$500.00 a month over the federal poverty guideline for a "Family Unit of 3."¹ This determination was based on a more generous formula benefiting the Defendant rather than the formula required by the poverty guidelines. Even under the more lenient formula, the Defendant is ineligible for a court appointed attorney from the Cobb County Circuit Defender program. Relying on this determination, the Court FINDS that Defendant is ineligible for funds for expert witnesses in this Walker County case and ORDERS that Defendant's application for indigency be DENIED. Although the Court informed both parties that a reconsideration of this ruling by either side should be directed to Gary Pairan, the Court ORDERS that any reconsideration be made in writing within ten (10) days of the issuance of this order to the Chambers of the Court by submitting a copy to the Court's law clerk, Leanne Dolin.

SO ORDERED this 2nd day of December 2003.



James G. Bodiford
Superior Court Judge
Cobb Judicial Circuit
Sitting by Special Appointment in
Walker County Superior Court

¹ The Court notes that if the child care costs were not deducted, Defendant's net income would be over \$700.00 a month over the poverty guideline amount.

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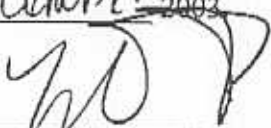
CERTIFICATE OF SERVICE

This is to certify that I have this date mailed a copy of the foregoing Order dated
December 2, 2003 through the United States Postal System and by facsimile to the
following:

McCracken Poston
P.O. Box 1130
Ringgold, Georgia 30736
706/638-4821

District Attorney Herbert E. "Buzz" Franklin
P.O. Box 1025
LaFayette, Georgia 30728
706/965-5413

This 2 day of December, 2003



Leanne E. Dolin
Law Clerk to Judge James B. Bodiford
Cobb Superior Court
Cobb Judicial Circuit
Sitting by Special Appointment in Walker County, Georgia