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IN THE SUPERIOR COURT OF WALKER COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

-VS-

TOMMY RAY-BRENT MARSH,

DEFENDANT.

*

CASE NOS. 03-CR-20884; 03-CR-20885;
03-CR-20886; 03-CR-20887

*

FILED IN OFFICE

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APR 30 2004

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Sue Madam
Clerk

**STATE'S RESPONSE TO DEFENDANT'S
"MOTION FOR FULL RECORDATION
AND OBJECTION TO NON-RECORDED PROCEEDING"**

Now Comes the State of Georgia, by and through the District Attorney, and responds to said motion as follows:

1.

The State has no opposition to full recordation of the testimony and proceedings in the case. O.C.G.A. § 17-8-5, O.C.G.A. § 5-6-41


2.

However, the objection interposed by the Defendant is irrelevant and moot. The Defendant and counsel appeared at the meeting on Monday, April 5, 2004 as did counsel for the State. The meeting was scheduled by the Court as a courtesy to the Defendant and counsel. The Court was not obligated to meet with the Defendant and counsel to reach a decision as to what county to select for a change of venue. Where counsel cannot agree on a county for a change of venue, the Court, in its discretion, selects the county. O.C.G.A. § 17-7-150. The Court simply conducted the meeting to gratuitously request input from counsel. At no time during the course of the meeting did the Defendant interpose any objection although the Court did provide that if either side wanted to put anything on the record, the Court would permit counsel to do so. The

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Defendant chose not to make a contemporaneous objection as required by Georgia law, but opted to belatedly file a written objection. Although there was absolutely nothing objectionable, under the contemporaneous objection rule, the Defendant has waived any potential objection. *Thornton v. State*, 264 Ga. 563 (1994), *Dyer v. State*, 257 Ga. App. 267 (2002).

This 21st day of April, 2004


Herbert E. Franklin
District Attorney
State Bar No. 273325

District Attorney's Office
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LaFayette, GA 30728
706-638-2121

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing State's Response to Defendant's Motion to Exclude Indictment From Going Out With The Jury upon the lead attorney for the Defendant by mailing a true and correct copy of same with sufficient postage thereon to ensure delivery to its destination:

McCracken Poston
Attorney At Law
P.O. Box 1130
Ringgold, GA 30736

A copy of this pleading is being directed to Leanne Dolin, law clerk to the Honorable James G. Bodiford, at Superior Court Building, 30 Waddell Street, Marietta, Georgia 30090-1822.

This 21st day of April, 2004.



District Attorney
Lookout Mountain Judicial Circuit

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