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FILED IN OFFICE

IN THE SUPERIOR COURT OF WALKER COUNTY

JAN 6 2004

STATE OF GEORGIA

Lucie Madam
Clerk

STATE OF GEORGIA,

*

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

-VS-

*

03-CR-20886; 03-CR-20887

TOMMY RAY-BRENT MARSH,

*

DEFENDANT.

*

**STATE'S RESPONSE TO DEFENDANT'S
"OBJECTION TO ASSESSMENT OF TRANSCRIPT CHARGE
AND REQUEST FOR RELIEF FROM THE COURT "**

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

1.

The Defendant filed a motion to have the Court declare him to be indigent so as to permit the Defendant to utilize taxpayer dollars to fund his defense in the above-styled criminal prosecution. The Court heard evidence and denied the Defendant's motion. The Court's determination of indigency is within the discretion of the trial court and is not reviewable. *Penland v. State*, 259 Ga. 641 (1989), *Schlau v. State*, 261 Ga. App. 303 (2003), *Barrett v. State*, 192 Ga. App. 705 (1987). Although such a decision is not reviewable, the Court gave the parties ten days to request reconsideration of the Court's ruling and the Defendant timely filed a request for reconsideration.


2.

The Defendant now objects to a directive the Court made during the course of the hearing that the Defendant pay for a partial transcript to afford the Court a better opportunity to assess his claim. Rather than making a contemporaneous objection as required by Georgia law, the

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Defendant opted to belatedly file a written objection. The contemporaneous objection rule has long been part of Georgia law. *Thornton v. State*, 264 Ga. 563 (1994), *Dyer v. State*, 257 Ga. App. 267 (2002). It serves a beneficial purpose by providing the Court with an opportunity to consider the objection in context and make a correction, if appropriate. Here, the Defendant had made a request of the Court to be declared indigent. The Court did not assess any costs against an indigent defendant but simply directed a non-indigent defendant to supply him with a transcript in order to be able to properly rule on Defendant's request. The Defendant acquiesced in the Court's ruling that he pay for the transcript. The Defendant's citations to assessment of costs against convicted defendants is entirely inapposite here. There is no presumption of indigency under the law.

This 6th day of JANUARY, 2004


Herbert E. Franklin
District Attorney
State Bar No. 273325

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P.O. Box 1025
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 "Objection to Assessment of Transcript Charge and Request for Relief from the Court" 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 6th day of JANUARY, 2004.

Idell S. Jones
District Attorney
Lookout Mountain Judicial Circuit

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