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IN THE SUPERIOR COURT OF WALKER COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

*

-VS-

FILED IN OFFICE

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

TOMMY RAY-BRENT MARSH,

DEC 1 2 2003

DEFENDANT.

Sue M. Clark
*
Clerk

**STATE'S RESPONSE TO DEFENDANT'S MOTION FOR
RECONSIDERATION ON INDIGENT STATUS APPLICATION**

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

1.

The usual methodology in assessing indigent status must apply in this case as in any other. The defendant conjures up a misleading perception of the evidence arrayed against him in regards to the identification of hundreds of human remains found on his business premises and hidden near his home. Many of the identifications were made by simple visual means. Many of the identifications were predicated upon very strong circumstantial evidence such as identification tags, unique prosthetic devices and singular medical and physiological factors wherein an expert's examination would be of no value. There are relatively few, if any, identifications which may be subject to any reasonable challenge which may be secured through the assistance of an expert. Such expert assistance is nonetheless readily available to the defendant through his involvement in the civil actions which have arisen out of the same factual context as the criminal charges. Previous testimony has already established that the defendant has access to those experts but the defendant has been requested to forego contact with the experts to enable his attorneys in the civil litigation to shield the experts' information from discovery in the civil arena. The taxpayers

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should not have to fund additional experts to provide identical services simply to promote the defendant's tactic of gamesmanship in the civil litigation.

2.

The defendant asserts that his spouse has "given the Court notice that she cannot and does not desire to spend funds" for the purposes for which the defendant now seeks taxpayer dollars. The prior representations of the defendant in the bond proceedings were that he had the strong support of his family and friends.


3.

The defendant now claims a change in circumstances since the Court's denial of his claim of indigent status. The defendant claims he was served with legal process of a Petition for Separate Maintenance by his spouse and "did not contest" the separation decree which was granted. The allegations of the Petition filed by the defendant's wife and the circumstances surrounding the purported grant of a final decree simply serve to illustrate the entire proceeding is a mere sham designed to enhance the defendant's claim of indigence. The clerk's file contains no evidence of service of process. The rule nisi which set a date and time for a hearing failed to name the location of the hearing. The actual hearing was held out of the county and one day prior to that stated in the rule nisi in the chambers of a judge recused from participation in this case. The time lapse from filing of the action to the final decree was only two days and could not have been done without the active consent of the defendant (not mere acquiescence as the defendant portrays in his motion for reconsideration). While the prayers of the Petition formally requested permanent alimony by the defendant be paid to the Petitioner as mandated by law, the factual allegations of the Petition subvert the prayer by stating the defendant could not pay alimony.

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Wherefore the State prays that the Court deny the defendant's Motion for Reconsideration.

This 12th day of December, 2005.


Herbert E. Franklin
District Attorney
State Bar No. 273325

District Attorney's Office
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 Motion for Reconsideration on Indigent Status Application upon the attorney for the defendant by mailing a true and correct copy of same with sufficient postage thereon to ensure delivery of same to its destination:

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

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

This 12th day of December, 2003.

Robert E. Furr
District Attorney
Lookout Mountain Judicial Circuit

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