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IN THE SUPERIOR COURT OF WALKER COUNTY **FILED IN OFFICE**
STATE OF GEORGIA

STATE OF GEORGIA,)
)
 vs.)
)
 TOMMY RAY-BRENT MARSH,)
)
 Defendant)

SEP 23 2003

CASE #'s *Asie madam Clerk*
03-CR-20884; 03-CR-00885;
03-CR-20886; & 03-CR-20887

**MOTION FOR DISCLOSURE OF ITEMS ARGUABLY SUBJECT TO SUPPRESSION
AND PRELIMINARY MOTION TO SUPPRESS**

NOW COMES the Defendant, through counsel, and respectfully requests that the prosecution provide the following:

(1) All search warrants, affidavits and returns resulting from the execution of any search warrant. This motion is made pursuant to the Fourth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraph XIII of the Constitution of the State of Georgia; O.C.G.A. § 16-13-46 (inventory following administrative searches); O.C.G.A. § 25-2-22.1 (inventory relating to inspection warrants); O.C.G.A. § 17-5-29 (written return of items seized during execution of search warrant); and, O.C.G.A. § 17-5-32 (documents seized from attorney who is not a criminal suspect). See also, State v. Slaughter, 252 Ga. 435, 315 S.E.2d 865 (1984) [burden of showing that search/seizure was lawful is upon the state - state must produce warrant and supporting affidavit(s)].

(2) A detailed description of all *other* items, including property and currency, obtained by the prosecution voluntarily, by seizure, or by process from the defendant, pursuant to arrest or during the investigation of this case. The state is required to maintain an inventory of any such property seized or acquired pursuant to O.C.G.A. § 17-5-2 (inventory of items seized without search warrant); O.C.G.A. § 17-5-29 (inventory to preserve property of accused while incarcerated); and, O.C.G.A. § 17-5-50 (police required to maintain list of property taken from prisoners). See also, Phillips v. State, 167 Ga. App. 260, 305 S.E.2d 918 (1983) (under a warrantless search and

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seizure the burden of proving that the search and seizure was lawful is upon the state).

The discovery of the above is necessary in order for Defendant to determine whether a motion to suppress evidence should be filed in this case. See, Thomas v. State, 118 Ga. App. 359, 163 S.E.2d 850 (1968), cert denied, 394 U.S. 943, 89 S.Ct. 1273, 22 L.Ed.2d 477 (1969) (motion to suppress shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion).

Defendant moves the Court, in this preliminary motion, to suppress all evidence and statements which were obtained in violation of the Fourth, Fifth, or Sixth Amendments to the Constitution of the United States of America; Article I, Section I, Paragraph XIII of the Constitution of the State of Georgia and O.C.G.A. § 17-5-30 (motion to suppress evidence illegally seized).

Since discovery has not been completed and the prosecution's disclosure of the information sought above has not occurred, this motion is being filed in preliminary form. This motion preserves Defendant's right to challenge the legality of any search and seizure of evidence that the State may introduce at trial against the defendant.

Defendant requests that:

- 1) Supplementation of this motion be permitted after the prosecution discloses the information sought in Paragraphs (1) and (2) above, or as additional facts become known to the defendant;
- 2) That the Court hold evidentiary hearings on this motion, as appropriate;
- 3) That the defendant be permitted to file a brief subsequent to any hearing; and,
- 4) That the Court suppress all evidence obtained in violation of the constitutional and statutory rights enumerated above.


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

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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