

504

IN THE SUPERIOR COURT OF WALKER COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
vs.	)	CASE #'s
	)	03-CR-20884; 03-CR-00885;
TOMMY RAY-BRENT MARSH,	)	03-CR-20886; & 03-CR-20887
Defendant	)	

MOTION TO EXCLUDE INDICTMENT FROM  
GOING OUT WITH THE JURY

COMES NOW the Defendant, through counsel, and moves the Court for an Order excluding the indictment from the evidence going out with the jury at the conclusion of the trial, and in support of the motion shows as follows:

The Defendant is charged in a total of seven hundred and eighty-seven felony counts contained in the above numbered four indictments, to wit: #03CR20884 "Burial Service Fraud" (122 counts); #03CR20885 "False Statement" (47 counts); #03CR20886 "Abuse of a Dead Body" (179 counts); and #03CR20887 "Theft by Taking" (437 counts), "Criminal Attempt - Theft by Taking" (2 counts).

Defendant maintains that he will be unduly prejudiced by submission of the indictment to the jury. The jury could use the indictment improperly by giving undue weight to the sheer number of allegations. In addition, information on the indictment, such as dates of the alleged offenses, alleged victims, and allegations surrounding the acts may be given undue weight by the jury and may conflict with the evidence in this case.

It is within the trial court's discretion, on motion by the defendant, to exclude the indictment and the plea of not guilty thereto. See, Lumpkins v. State, GaSupCt, Case Number S94A0609,

**FILED IN OFFICE**

SEP 23 2003

*Alic madam*  
Clerk

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June 6, 1994, Hunt, Chief Justice, concurring; Daniel, Georgia Criminal Trial Practice (1993 ed.), § 24-15.

ABA Standards, Trial by Jury, Vol. III, Standard 15-4.1 (Materials to Jury Room), suggesting that the trial court, at the defendant's request, should consider:

- (1) whether the indictment will aid the jury in proper consideration of the case;
- (2) whether any party will be unduly prejudiced by submission of the material;
- (3) whether the material may be subjected to improper use by the jury.

In lieu of the indictment, Defendant requests the Court send to the jury a verdict form which presents the issues as they exist at the close of the evidence.

Respectfully submitted, this 23<sup>rd</sup> day of September, 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<sup>rd</sup> day of September, 2003.



McCracken Poston