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IN THE SUPERIOR COURT OF WALKER COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

-VS-

TOMMY RAY-BRENT MARSH,

DEFENDANT.

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

FILED IN OFFICE

NOV 06 2003

**STATE'S RESPONSE TO DEFENDANT'S
"MOTION FOR THE DISCLOSURE OF THE CRIMINAL RECORD,
PENDING CHARGES OR ANY IMPEACHING INFORMATION
AGAINST ANY WITNESS TESTIFYING FOR THE STATE"**

Sue Madam
Clerk

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

1.

To the extent this may be deemed a Brady motion, the State will comply with its obligations. The State submits that it is not required to discover and furnish the criminal history of all of its witnesses for use by the defendant at trial. Hall v. State, 261 Ga. 778, 415 S.E.2d 158 (1991). Should the State come into possession of the criminal history of any witness, it will furnish same to the Defendant, pursuant to Brady, with a copy of this history. Furthermore, defendant has the right to seek criminal histories directly from the Georgia Crime Information Center. O.C.G.A. 35-3-34. Therefore, the State requests that this motion be denied.


2.

The State also opposes the motion insofar as it seeks mental health records of the State's witnesses as defendant has shown no legal basis upon which he is entitled to the information. See Bobo v. State, 256 Ga. 357, 349 S.E.2d 690 (1986). "[I]n order to abrogate the psychiatrist-

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patient privilege, the defendant must make a showing of necessity, that is, that the evidence in question is critical to his defense and that substantially similar evidence is otherwise unavailable to him." Id. Furthermore, the State is not in possession of the psychiatric history of these witnesses and it would be improper for this Court to direct the district attorney to secure this information. If the State should come into possession of any information which may be considered Brady material, the State will comply with its obligation.

This 6th day of November, 20 03.


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 The Disclosure of The Criminal Record, Pending Charges or Any Impeaching Information Against Any Witness Testifying for the State 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 November, 2003.



District Attorney
Lookout Mountain Judicial Circuit

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