No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2007

ARTEMUS RICK WALKER,
Petitioner,
-v.-
THE STATE OF GEORGIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Ursula Bentele
Brooklyn Law School
250 Joralemon Street
Brooklyn, NY 11201
(718) 780-7990

Thomas H. Dunn
Ga. Bar No. 234624
Georgia Resource Center
303 Elizabeth Street NE
Atlanta, GA 30307
(404) 222-9202

Attorneys for Petitioner

CAPITAL CASE

QUESTION PRESENTED

Whether Georgia's current administration of the state's death penalty violates the Eighth Amendment standard, prohibiting arbitrariness and discrimination, as applied, due to the Supreme Court of Georgia's failure to: (1) conduct meaningful proportionality review, and (2) enforce reporting requirements under Georgia's capital sentencing scheme.

TABLE OF CONTENTS

TABLE OF AUTHORITES

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2007

ARTEMUS RICK WALKER,

Petitioner,

-v.-

THE STATE OF GEORGIA,

Respondent.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered on October 9, 2007, which affirmed the trial court's judgment convicting Petitioner of capital murder and sentencing him to death.

CITATION OF OPINION BELOW

The opinion of the Supreme Court of Georgia is reported as *Walker v. State*, 653 S.E.2d 439 (2007), a true and correct copy of which is attached hereto as Appendix A.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on October 9, 2007. A timely petition for reconsideration was denied on December 13, 2007, a true and correct copy of which is attached hereto as Appendix B. On

February 27, 2008, Justice Clarence Thomas granted the application for an extension of time within which to file a petition for writ of certiorari, making the petition due to be filed with the Court on or before May 12, 2008, a true and correct copy of which is attached hereto as Appendix C. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) because the Petitioner herein is asserting deprivation of his rights secured by the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Eighth Amendment to the United States Constitution, which provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted [;]

and the Fourteenth Amendment to the United States Constitution, which provides in relevant part:

Nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also concerns provisions of the Georgia Code, relevant portions of which are attached as Appendix D.

STATEMENT OF THE CASE

THE GUILT PHASE OF THE TRIAL

Introduction

Until May 1999, Petitioner Artemus Rick Walker was a small business owner with no prior criminal record. Mr. Walker was charged with , and

ultimately sentenced to death for, allegedly committing the murder of Lynwood Ray Gresham, a local banker and former deacon, in Montezuma, Georgia.

The Crime

On the evening of May 12, 1999, Montezuma Police responded to a call from the Gresham residence. (1589.) Police arrived on the scene and found the body of Lynwood Gresham on the side of his front yard. (1465, 1589, 1593-94.) At trial, the medical examiner testified that an autopsy of the body revealed "twelve major stab wounds in the chest and back, plus some multiple scratches over the elbows and face and the neck." (1485.) Mr. Gresham was killed at approximately 10:00 p.m. At the time, his wife and daughter, who is blind, were inside the house. (1589-90, 2150.)

At Mr. Walker's trial, Mrs. Gresham testified that, on the night Mr. Gresham was killed, the doorbell rang and Mr. Gresham went outside for approximately twenty minutes. When he came inside, Mr. Gresham said it was "the fellow that runs the station by the bank." (2151.) Shortly thereafter, Mr. Gresham left the house to buy milk at the grocery store. (2152.) After Mr. Gresham left, the family's dog started barking and Mrs. Gresham heard someone trying to enter the house with a key. (2152.) She bolted the door after she heard a garbled voice and immediately called the police. (2153.) She testified that she recognized Mr. Walker when he left the door and stood in front of her husband's truck. (2155.) Mrs. Gresham

testified that she saw two men ride away on bicycles after her daughter yelled to them that she had a gun. (2156.)

While on patrol, Officer Rodney Harpe received a call about a person with a gun at the Gresham residence. (1601.) On arrival, Officer Harpe saw two people fleeing from the residence, one on a bike and one on foot. (1602.) At trial he was unable to give further details about the suspects. (1621.) On his way to respond to a dispatch to the Gresham residence, Officer Charles Cannon Jr., recognized a former high school classmate, Gray Lee Griffin, riding his bicycle and called for him to stop. (1680-82.) Officer Cannon's suspicions were initially raised because Griffin was a black man in an "all-white neighborhood." (1681.) When Griffin did not follow Officer Cannon's order to stop, Officer Cannon trailed him into the woods and chased him on foot. (1680.) The officer found Griffin in a drainage ditch and he was apprehended. (1680-81.) Mrs. Gresham later identified Griffin as one of the two people outside her house when her husband was killed. (1604.)

After a radio transmission that "something was amiss in Montezuma" (1702), but without knowledge of the murder, Sheriff Charles Cannon headed toward the Gresham house, and on his way spotted Mr. Walker running into the woods. (1704-05.) Sheriff Cannon then set up a perimeter of law enforcement around the wooded area. (1688.) Mr. Walker was arrested approximately two hours later. (1689.) No weapons were found on his person, but he had three key rings in his possession (1690), which were later

identified as including keys to the car in the Gresham's driveway and the front door of the Gresham house. (1782-83.) Law enforcement found a bicycle, a knife, and a pistol in the wooded area where Mr. Walker was apprehended (1711-19), along with a pair of shoes and a small-caliber revolver. (1752.)

Accomplice Testimony

Mr. Griffin, who had previously been convicted of burglary, theft, and child molestation (1510, 1514, 1554-55), testified that Mr. Walker hired him on May 10, 1999, to do yard work around Mr. Walker's service station. (1516.) According to Mr. Griffin, the next day, Mr. Walker mentioned a plan to rob and kill a "rich white man" (1517), to "take the money, take the jewels." (1518.) Mr. Griffin testified that Mr. Walker asked him to participate, and he agreed. (1520.) On May 12, 1999, Mr. Griffin and Mr. Walker borrowed a car from Wilbert Tooks, another employee at Mr. Walker's service station (1519, 1521), and stopped to pick up a bicycle before heading to Mr. Walker's home. (1522-23.) At Mr. Walker's apartment, the two changed into black clothing, armed themselves, loaded the car with two bicycles, and then drove to the Gresham residence. (1525-26.)

Mr. Griffin testified that Mr. Walker went inside the Gresham house for thirty-five to forty minutes and then returned to the front yard with Mr. Gresham. (1526-27.) Mr. Griffin denied any involvement in the physical killing. (1530-31.) He testified that he took Mr. Gresham's wallet and keys while Mr. Walker stabbed Mr. Gresham and dragged him to the side of the

house. (1530-31.) According to Mr. Griffin, Mr. Walker then attempted to enter the house using the keys Mr. Griffin took from the victim. (1531.) When Mrs. Gresham yelled that she was calling the police and had a gun (1532), both Mr. Walker and Mr. Griffin rode away on their bicycles. (1532.) About ten minutes later, Mr. Griffin crashed his bicycle (1532) and ran to hide in a sewer pipe before the police apprehended him. (1533.) At trial, Mr. Griffin identified the knife he had on him during the incident (1537-38), as well as the stun gun, Mr. Gresham's wallet, and an extension cord that were found on him at the time of his arrest. (1539-41.)

The Prosecution's Theory

During closing arguments, the State described Mr. Walker as a man obsessed with spying and martial arts. The district attorney stated that Mr. Walker "thought of himself as a would-be assassin [who f]inally, one night, went out into the neighborhood and put one of his assassin fantasies into place." (2231.)

Police searched Mr. Walker's home on May 13, 1999. (1929.) During the search, the police took a number of photographs of items in the apartment, all of which were admitted over the objections of Mr. Walker's defense counsel. (1941.) The court found the evidence relevant to "indicate . . . the ninja mentality of someone, taping reflectors, putting on black clothes, riding through the middle of the night and assault on a house [sic]." (1924.) The photographs included images of stuffed clothing in the shape of a human torso, a white tae kwon do robe and black belt, a stun gun, four chemical

protective suits, and numerous books and videos relating to spying. (1941.) Over defense counsel's objections, the court also admitted physical evidence of items found in Mr. Walker's home including a stun gun (2001), a video on how to make a silencer (2003), and several magazines containing military gear, ammunition, and informational books on such items. (1998.) The court also admitted, over defense counsel's objection, a receipt for an order for a book on silencers (2001) and commented on a box of items admitted as evidence (2014), identifying them in the presence of the jury, as something that might appear on a "spy television show." (2023.) Defense counsel's motion for a mistrial was denied. (2024.)

The prosecutor described Mr. Walker as a ninja assassin who collected items to "practice his assassination techniques" (2249), and told the jury that the "way you know that Mr. Walker is the fellow who did this crime is all of the stuff that's in his apartment." (2248.) The district attorney also quoted the Bible, telling the jury that "[i]t's written that the wicked flee when no man pursueth: but the righteous are bold as a lion . . . . [Art Walker is] running through the woods so hard that he runs right out of his little homemade ninja shoes . . . . Is that an indication of guilt? I think that you should believe that that is so." (2264.) The state also urged the jury to make their decision of guilt while viewing themselves as the "Lord's fisherman." (2269.)

After deliberations, the jury returned a verdict of guilty against Petitioner for the capital murder of Mr. Gresham. (2391.)

THE PENALTY PHASE

In the sentencing phase of the trial the court instructed the jury that, after considering all evidence received in both stages of the proceedings, it had the option to impose one of three penalties: a death sentence, life imprisonment without parole, or life imprisonment. (2581.) The court instructed the jury that, in order to sentence Mr. Walker to death or life imprisonment without parole, it must find beyond a reasonable doubt at least one statutory aggravating circumstance. (2582.) The jury was also told to consider any mitigating facts or circumstances in reaching its decision. (2581.) The aggravating circumstances presented to the jury included: (1) that the murder was committed during the commission of another capital felony or aggravating battery, (2) that the murder was committed for the purpose of receiving monetary gain, and (3) that the murder was "outrageously or wantonly vile, horrible, or inhumane, and that it involved depravity of mind, torture to the victim . . . or an aggravated battery." (2582.)

In mitigation, Mr. Walker's mother, Joanne Paul, and uncle, George Walker, testified to his general character. (2519-42.) George Walker stated that Mr. Walker did not drink alcohol or smoke cigarettes, owned his own business, and regularly attended church. (2522-25.) George Walker also testified that Mr. Walker was a good businessman and was cordial with his customers. (2525-26.)

Mr. Walker's mother informed the jury that he graduated from high school in Florida, that he was a very religious child who wanted to be a priest, and often preached to young people as a young adult. (2531-33, 2538.) Ms. Paul also testified that the Mr. Walker had no disciplinary problems growing up, and that he had never been arrested. (2531-32.) Ms. Paul stated that Mr. Walker was never a member of a gang, did not smoke, take drugs, or drink alcohol, and was not married because he was saving himself for the perfect woman. (2535.) Finally, Ms. Paul testified that he had worked for a Housing Authority to help support his family after high school and had tried to become a correctional officer, but explained that he did not follow through on that plan because he did not want to fire a weapon. (2536-37.)

The prosecutor presented a series of witnesses during the sentencing phase. First, a firearms examiner testified that a device found in Mr. Walker's home was a silencer, which fit a 9-millimeter gun, and that it had been used before. (2458-59.) Next, Mr. Walker's employee, Anthony McKellar, stated that while holding a gun Mr. Walker told Mr. McKellar that if he crossed him, he and his family would be killed. (2466-67.) Mr. McKellar did not take Mr. Walker's statement as a threat and continued to work for him. (2470-72.) Mr. McKellar also testified that Mr. Walker wanted to help him out with his drinking problem. (2470-72.) A police officer and jail administrator testified about a letter sent from Mr. Walker's jail to Mr. Griffin, allegedly by Anthony McKellar, which directed Mr. Griffin to take the

blame for the murder. (2475-84, 2487-89.) After a hearing about authenticity, the court admitted the letter in evidence against Mr. Walker and allowed the state's attorney to read it to the jury. (2494, 2497-98.)

The prosecutor also presented nine witnesses to provide victim impact statements. (2499-2518.) Three witnesses were members of the Mr. Gresham's family and the other six were acquaintances of the Mr. Gresham through his position as vice president of a local bank. (2499-2518.) Several witnesses stated that Mr. Gresham was a Christian or that he was a deacon of his church. (2500, 2509, 2512, 2514, 2516, 2518.) One of Mr. Gresham's employees testified that he was "one of God's angels put on this earth for all of us," the Mr. Gresham's cousin said he was "a good Christian person," and Mrs. Gresham testified that he was the "most caring Christian" and "God has someone in heaven now that takes care of heaven and can make it beautiful." (2501-02, 2514, 2518.)

During closing arguments the prosecutor told the jury that the aggravating circumstance of murder committed during another felony was already satisfied by their guilt determination that Mr. Walker committed murder while in the process of an armed robbery. (2552.)

To support the argument that the murder was outrageously or wantonly vile, horrible, or inhuman, the prosecutor told the jury to compare the autopsy photographs of the victim with living pictures of him to find an aggravated battery prior to death. (2553.) The jury was also advised to

consider the medical examiner's testimony regarding the number and nature of the victim's stab wounds and the length of time it took him to die, during which he might have been "saying a last little prayer as his life faded away," as evidence of torture prior to death. (2553-54, 2464.)

As final support that the murder was outrageously or wantonly vile, horrible, and inhuman, the prosecutor advised the jury to consider the autopsy photos and the nature of the crime as evidence of Mr. Walker's depravity of mind. (2555.) In addition, Mr. Walker's "prior belief that he's some kind of spy, assassin, ninja, or something" was offered as further evidence of his depravity. (2564-65.)

Regarding the non-statutory aggravating factors, the prosecution asked the jury to consider that Mr. Walker tried to influence witnesses, made threats against others, owned working silencers, was "dire, diabolical, and evil" in his attempts to blame others for the crime, and was "dedicating himself" to being a "ninja assassin who tried to kill people." (2565, 2567, 2269.) The prosecutor also asked the jury to consider why Mr. Walker did not take the working silencer with him, and suggested that Mr. Walker thought to himself: "I'll never talk [the police] into the idea that Gary Griffin made the silencer for a 9-millimeter handgun, so I better not use that, I better leave that at home. I'll save that. If I get away with this one, maybe I'll use it on the next one." (2558.)

After approximately ninety (90) minutes of deliberation, the jury recommended a sentence of death after unanimously finding five statutory aggravating circumstances: the murder was committed while Mr. Walker was engaged in armed robbery, the murder involved an aggravated battery to the victim, the murder involved torture to the victim, the murder was committed for the purpose of receiving money, and the murder was outrageously or wantonly vile, horrible, or inhuman in that it involved depravity of mind of the defendant. (2591-93.) On appeal, the Supreme Court of Georgia invalidated two aggravating factors on which Mr. Walker's death sentence was based. The Court held that the evidence did not support the jury's finding of aggravated battery before death or torture. *See Walker v. State,* 653 S.E.2d 439, 447 (2007).

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Under Georgia law, defendants who receive death sentences are entitled to review of those sentences by the Supreme Court of Georgia. Ga. Code Ann. § 17-10-35 (a) The Georgia statute requires that the trial court "transmit the entire record and transcript to the [state] Supreme Court together with a notice prepared by the clerk and a report prepared by the trial judge," *id.*, and that, thereafter, the Supreme Court of Georgia determines whether his death sentence "[wa]s excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant," Ga. Code Ann. § 17-10-35(c)(3) regardless of what other appellate

issues are raised. This Court emphasized the important safeguard provided by this mandatory proportionality review in its approval of the Georgia statute in *Gregg v. Georgia*, 428 U.S. 153 (1976) and *Zant v. Stephens*, 462 U.S. 862 (1983).

Though the trial court in Mr. Walker's case failed to file the statutorily required report, the Supreme Court of Georgia addressed the proportionality issue in its decision rejecting Mr. Walker's other appellate issues. The court applied the standard of whether a death sentence was "'excessive per se' or 'substantially out of line' given the crime and the evidence regarding the defendant and whether the crime is in a category of crimes that 'have so consistently ended with sentences less than death that the death penalty in any one case would be clearly disproportionate.'" *Walker v. State*, 653 S.E.2d 439, 447 (Ga. 2007) (quoting *Gissendaner v. State*, 532 S.E.2d 677, 690 (Ga. 2000)). The court concluded that Mr. Walker's death sentence was not disproportionate punishment, based on its determination that (1) Mr. Walker was more culpable than was his mentally retarded co-defendant who was not eligible for and did not receive the death penalty, and (2) based on citations to twenty-two cases characterized by the court as cases that "involved a deliberate plan to kill and killing for the purpose of receiving something of monetary value." *Walker*, 653 S.E.2d at 447-48. Because the constitutional violation was committed by the Supreme Court of Georgia on its mandatory review of Mr. Walker's case, this petition for a writ of certiorari is the first

opportunity to raise a claim challenging the adequacy of that review. This Court has well-established discretion to review federal questions initially raised in a petition for certiorari. *Vachon v. New Hampshire*, 414 U.S. 478, 479 n.3 (1974).

REASONS FOR GRANTING THE WRIT

I. AS THIS COURT'S APPROVAL OF GEORGIA'S CAPITAL SENTENCING STATUTE RELIED IN SIGNIFICANT PART ON THE SAFEGUARD OF MEANINGFUL PROPORTIONALITY REVIEW, THE COURT SHOULD CONSIDER WHETHER THE GEORGIA SUPREME COURT'S FAILURE TO CONDUCT SUCH REVIEW RISKS ARBITRARY AND CAPRICIOUS DEATH SENTENCES IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS

In *Gregg v. Georgia*, this Court stressed that "[w]hen a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed." *Gregg,* 428 U.S. 153, 187 (1976). Even under this stringent standard, the Court has twice approved Georgia's capital sentencing statute. *See Zant v. Stephens*, 462 U.S. 862 (1983); *Gregg v. Georgia*, 428 U.S. 153 (1976). The Court found that Georgia's procedural safeguards—bifurcated trials, consideration of mitigating factors, the necessity of finding at least one statutory aggravating factor, proper documentation of the basis for the death sentence and automatic appeal to the Supreme Court of Georgia for proportionality review—adequately protect defendants against arbitrary and capricious imposition of the death penalty. *Gregg*, 428 U.S. at 196-198, 96 S.Ct. 2909 (1976).

a. Proportionality Review is an Integral Component of the Georgia Statute as Approved by This Court.

Of particular importance to the *Gregg* Court was that, on appeal, the Supreme Court of Georgia is required to:

> review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases.

Id. at 428 U.S. 153, 198 (1976); Ga. Code Ann. § 17-10-35(a). Proportionality review by the Supreme Court of Georgia "substantially eliminates the possibility that person will be sentenced to die by the action of an aberrant jury." *Gregg,* 428 U.S. at 206. *See also Zant v. Stephens*, 462 U.S. 862, 876 (1983) (stating that the Supreme Court of Georgia's proportionality review is meant to "protect against the wanton and freakish imposition of the death penalty").

In *Zant v. Stephens*, this Court stressed the role of meaningful proportionality review in meting out the death penalty in Georgia, stating that:

> Our decision in this case depends in part on the existence of an important procedural safeguard, the mandatory appellate review of each death sentence by the Georgia Supreme Court to avoid arbitrariness and assure proportionality. . . As we noted in *Gregg*, we have also been assured that a death sentence will be vacated if it is excessive or substantially disproportionate to the penalties that have been imposed under similar circumstances.

Zant, 462 U.S. at 890 (internal citations omitted). The Court emphasized the critical significance of proportionality review in its conclusion that the invalid aggravating factors did not require reversal of the death sentence imposed, stating that its "decision depend[ed] in part on the existence of an important procedural safeguard, the mandatory appellate review of each death sentence by the Georgia Supreme Court to avoid arbitrariness and to assure proportionality." *Id.* at 889-90. And again, the Court described this effective proportionality review as one that includes a comparison of cases in which both death and life sentences were imposed. *Id.* at 889 n.26, 880 n.19. In other words, the Supreme Court of Georgia's statutorily mandated proportionality review serves, in large measure, to ensure the constitutional imposition of the death penalty.[1]

This Court's conclusion that Georgia's capital sentencing scheme was constitutional, however, rested expressly on its determination that the Supreme Court of Georgia had "taken its review responsibilities seriously." *Gregg,* 428 U.S. at 205. As the instant case illustrates, the state's highest court has failed to maintain its disciplined approach to reviewing death

---

[1] Although proportionality review specifically is not constitutionally required in every state's capital punishment scheme, each state must have adequate safeguards against unfettered jury discretion that risks arbitrary and capricious—and therefore unconstitutional—death sentences. *See generally Pulley v. Harris*, 465 U.S. 37 (1984) (holding that the Eighth Amendment does not require proportionality review by an appellate court in every case in which it is requested by the defendant). As this Court noted in *Gregg v. Georgia*, "each distinct [capital punishment] system must be examined on an individual basis." 428 U.S. 153, 195 (1976). Georgia's legislature, however, has chosen proportionality review as the state's method of ensuring constitutional imposition of the death penalty. Therefore, the Supreme Court is required to engage in a meaningful proportionality review of each case.

sentences in violation of defendants' constitutional rights. Proportionality review, as currently administered by the Supreme Court of Georgia, is constitutionally deficient because the court fails to consider capital cases in which life sentences were imposed along with cases in which death sentences were imposed when determining the proportionality of the sentence. In addition, the Supreme Court of Georgia consistently fails to enforce the statutory reporting requirement. *See* Ga. Code Ann. § 17-10-35. Thus, the Court should grant review to consider whether the Supreme Court of Georgia has failed to constitutionally administer the state's capital sentencing scheme.

b. Meaningful Proportionality Review is a Critical Check Against the Unlimited Jury Discretion Permitted Under Georgia's Capital Sentencing Statute.

When this Court approved Georgia's capital sentencing statute for the second time, it did so based on the assumption that Georgia's sentencing scheme, which Georgia likened to a pyramid, significantly narrows the class of death-eligible defendants thereby permitting jury discretion in only a limited number of cases. *Zant*, 462 U.S. at 879. In practice, however, Georgia's representation of its sentencing scheme as a pyramid with a small apex, encompassing the cases that tolerate jury discretion, is misleading. In fact, the "apex" actually comprises a majority of the death-eligible murders, and within this apex, the imposition of death sentences in an arbitrary and capricious manner is a serious and disconcerting possibility. Accordingly, upon examination of the practical effects of Georgia's sentencing statute, it

becomes striking just how necessary proportionality review is to check against arbitrary and capricious death sentences.

To find a defendant convicted of murder to be eligible for the death penalty in Georgia, a jury need only find that one of eleven statutory aggravating circumstances exists. Ga. Code Ann. § 17-10-30 (2006). In making its sentencing decision, the jury may also consider "any mitigating circumstances or aggravating circumstances otherwise authorized by law," but is not given any instruction on how to weigh or evaluate these additional factors. *Id.* The Georgia capital punishment statute provides for automatic review of every death sentence by the Georgia Supreme Court, in which the court is to determine, among other things[2], " [w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." Ga. Code Ann. § 17-10-35.

In response to a question certified by this Court, the Georgia Supreme Court explained Georgia's "premises for its treatment of aggravating circumstances," by analogizing Georgia law governing homicides to a pyramid, in which the people who actually receive the death penalty are represented by merely the small apex of the comparatively large pyramid that encompasses all homicides. *Zant*, 462 U.S. at 870-72. As the Georgia court described:

---

[2] The two other aspects of Georgia's review provision provide that the state Supreme Court must consider whether "the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor," and whether "the evidence supports the jury's . . . finding of a statutory aggravating circumstance . . . ."

> The consequences flowing to the perpetrator increase in severity as the cases proceed from the base to the apex, with the death penalty applying only to those few cases which are contained in the space just beneath the apex. To reach that category, a case must pass through three planes of division between the base and the apex.

Id. at 870-71. The first two planes are fixed by the legislature and not are not subject to jury discretion. Georgia legislature defines which homicide cases will pass through the first plane, which separates statutory "murder" cases from non-murder homicides.[3] To pass through the second plane, the jury must find at least one of (then) ten statutory aggravating factors; once an aggravating circumstance is found, the defendant is death-eligible. As the scheme is structured, the jury has absolute, unfettered discretion to decide whether a defendant passes through the third plane. Considering all aggravating and mitigating evidence, the jury decides to impose life or death without any specific guidance from the Court. *Id.* at 870-71. The automatic appeal procedure, when the Georgia Supreme Court considers those cases which have passed through all three planes, is to serve as the final limitation and ensures that the death sentence is not excessive or disproportionate to the penalty imposed in similar cases. *Id.* at 872; Ga. Code Ann., §17-10-35.

In reality, Georgia's sentencing scheme does not prevent arbitrary and capricious death sentences because the pyramid's large apex includes *most*

---

[3] Georgia's capital punishment statute holds that "[a] person commits murder when he unlawfully and with malice aforethought . . . causes the death of another human being." Ga. Code Ann. § 16-5-1. Further, "[a] person also commits the offense of murder when, in the commission of a felony, he causes the death of another human being irrespective of malice." *Id.*

murder cases and delineates an area where a jury exercises absolute discretion. Under Georgia's sentencing statute a jury may impose death as long as it finds one of (now) eleven aggravating factors present. Significantly, these eleven aggravating circumstances include nearly every possible murder, and therefore make most murderers eligible for the death penalty. See Appendix D. Thus, Georgia jurors have the opportunity to consider a death sentence for most murderers and are given "absolute discretion to . . . not impose death." *Zant*, 462 U.S. at 871 (quoting the Georgia Supreme Court's description of the pyramid structure). Indeed, under the statute one jury could find ten mitigating circumstances and only one aggravating factor and impose death, and another jury could find ten aggravating factors and one mitigating circumstance and grant a life sentence. Thus, the third plane where uninstructed juries have absolute discretion to impose death, can slide down the pyramid and include nearly all murders. Because Georgia's numerous statutory aggravating factors make nearly all murderers eligible for the death penalty, and its sentencing statute grants unlimited discretion to juries and fails to give any weighing instructions, the likelihood of arbitrary and capricious death sentences, as well as racially discriminatory sentences, is great. Accordingly, a *meaningful* proportionality review is a critical check against the effects of unguided sentencing discretion that troubled this Court in *Furman*.

c. The Supreme Court of Georgia Fails to Engage in Meaningful Proportionality Review By Excluding Life Sentences From the Proportionality Analysis.

Georgia's proportionality review has deteriorated from the procedure this Court approved—a constitutionally appropriate and disciplined safeguard—into a flawed and cursory exercise. The Supreme Court of Georgia's present review not only excludes cases in which the defendants received life sentences from the pool of cases considered, but it often supports decisions of proportionality by citing to overturned cases. Given these failures, this Court should reconsider its former confidence in the Supreme Court of Georgia's application of the state's capital sentencing scheme.

In determining that Georgia's proportionality review was constitutional, this Court understood the Supreme Court of Georgia's procedure to include consideration of and comparison to cases in which the jury imposed life sentences and those in which the jury imposed death sentences. *See Gregg*, 429 U.S. at 205 n. 56 (noting that the Supreme Court of Georgia "does consider appealed murder cases where a life sentence has been imposed" in conducting its proportionality review); *Zant*, 462 U.S. at 889 n. 19 (quoting the Supreme Court of Georgia's statement in *Stephens v. State*, 237 Ga. 259, 227 S.E.2d 261, 263 (1976) that "In performing the [statutorily mandated proportionality review], this court uses for comparison

purposes not only similar cases in which death was imposed, but similar case in which death was not imposed.")

Immediately following *Gregg*, the Supreme Court of Georgia looked at cases resulting in life sentences in addition to those resulting in death sentences in performing its proportionality review. *See, e.g., Horton v. State*, 249 Ga. 871, 880 n.9 (1982) (emphasizing that in its proportionality analysis, the court does not consider cases in which the death penalty was unavailable, but "we *do* compare cases as to which the death penalty could have been sought by the prosecutor but was not"); *Hall v. State*, 241 Ga. 252 (1978) (holding that the defendant's death sentence was disproportionate in comparison to his accomplice's life sentence); *Stephens v. State*, 237 Ga. at 263 (rejecting defendant's argument that the court's proportionality review was unconstitutional because "[i]n performing the sentence comparison required by [the Georgia code], this Court uses for comparison purposes not only similar cases in which death was imposed, but similar cases in which death was not imposed"); *Ward v. State*, 239 Ga. 205, 208 (1977) (comparing the sentences received by the defendant at initial trial and re-trial following reversal and holding that the "death sentence in the case under review is obviously disproportionate to the life sentence previously imposed against the same defendant in the same case"); *Coley v. State*, 231 Ga. 829 (1974) (holding that death sentence was disproportionate after comparison to similar cases in which the defendant received life in prison).

In the decades since *Gregg* and *Zant* were decided, however, the Supreme Court of Georgia has abandoned the practice of comparison with life-sentence cases as part of the proportionality review. *See* Clark Calhoun, Reviewing the Georgia Supreme Court's Effort at Proportionality Review, 39 GA. L. REV. 631, 657-58 (2005) (collecting cases and citing a study of death penalty cases in which the Supreme Court of Georgia conducted proportionality review looking at only cases in which the death penalty was actually imposed, and concluding that "the universe of cases considered by the Georgia Supreme Court has been limited to death sentence cases for *at least* the last ten years," and noting that it is likely "that this limited universe has been in use since as early as 1984"). In fact, the proportionality review is now typically little more than a cursory exercise to comply with the statutory requirement. *Id.* at 660 (explaining that in each of the death penalty cases that the Supreme Court of Georgia reviewed between 1994 and 2004 "the court's proportionality review has been conducted in a few lines near the end of the opinion," and typically reads "the death sentence is not disproportionate to the penalty imposed in similar cases, considering both the crimes and the defendant. The similar cases listed in the Appendix support the imposition of the death penalty in this case") (citing *Pye v. State*, 505 S.E.2d 4, 14 (Ga. 1998). As a result of this under-inclusive proportionality review, Georgia's capital sentencing scheme is, in current practice, constitutionally deficient.

Rather than working within the universe of death penalty cases, *Gregg* requires the Supreme Court of Georgia to consider the universe of analogous crimes, and ask if, and how often, the death penalty has been imposed under similar circumstances. If the guiding principle behind choosing cases for proportionality review is the sentence rather than the crime, the court misses the opportunity to consider whether the imposition of a capital sentence is an anomaly with the universe of a particular crime. In other words "[i]n order to identify whether something is more like one thing (a life sentence) or another (a death sentence), a meaningful evaluation requires comparison to *both.* When a court considers only death sentence cases, its 'universe' of cases is too limited to perform a meaningful review." *Id.* at 636.[4]

In the instant case, the Supreme Court of Georgia looked only to cases involving death sentences, eliminating the possibility of a thorough and meaningful comparison of sentences in similar cases. *See Walker v. State,* 653 S.E.2d 439, 448 (2007). Had the Georgia Supreme Court conducted a

---

[4] Mr. Calhoun's article includes a useful analogy penned by Chief Justice Krivosha of the Nebraska Supreme Court:

> If one wants to determine whether individuals are being discriminated against in public transportation, one does not merely look at those who are required to sit in the back of the bus and conclude that since everyone in the back of the bus looks alike, there is no discrimination. One, of necessity, must look at who is riding the front of the bus as well in order to determine whether the persons in the back are being discriminated against. So, too there is no way that we can determine whether those who are sentenced to death are being discriminated against if we do not examine those cases having the same or similar circumstance which, for whatever reason, did not result in the imposition of a death sentence.

Calhoun, 39 Ga. L. Rev. 631, 637, citing *State v. Palmer*, 399 N.W.2d 706, 752 (Neb.1986) (Krivosha, C.J., concurring in part and dissenting in part).

proper proportionality review it would have found several life sentence cases with crimes similar to the ones in Mr. Walker's case. *See, e.g., Lewis v. State,* 614 S.E.2d 779, 279 Ga. 464 (2005) (defendant was sentenced to consecutive terms of life without parole where he murdered one victim for the specific purpose of causing emotional distress to his former wife, murdered four other strangers, and then shot his former wife); *Philpot v. State,* 486 S.E.2d 158, 268 Ga. 168 (1997) (defendant was convicted of two counts of murder, four counts of felony-murder, three counts of aggravated assault, and two counts of possession of firearm by convicted felon concerning a shooting in a night club and was sentenced to life without parole); *Stanley v. State,* 261 Ga. 412 (1991) (defendant was convicted of murder and armed robbery and given a life sentence after he stabbed the victim 25 times, destroyed his larynx and jawbone, and repeatedly kicked the victim which left impressions on the neck, bruises in the kidney areas, and cracked ribs)); *Lemay v. State,* 264 Ga. 263 (1994) (defendant was given a life sentence after he and two accomplices robbed a neighbor's home and stabbed the homeowner several times with a large knife, and slashed his throat and jugular vein with a razor); *Cobb v. State,* 295 S.E.2d 319, 250 Ga. 1 (1982) (defendant was convicted of malice murder and armed robbery, had a previous 25-year sentence for armed robbery, and was given consecutive life sentences). Thus, there were similar cases in the pool of Georgia murder convictions that the Supreme Court could have used to undertake a suitable proportionality

review and truly determine whether Petitioner's death sentence was proportionate.

d. Because the Supreme Court of Georgia's Proportionality Review Is Constitutionally Deficient, The System Fails To Detect Disproportionate And Racially Discriminatory Death Sentences.

Without a proportionality review that considers both life and death cases, the Supreme Court of Georgia loses a check against racially discriminatory death sentences. The Court's review would fail to detect, for example, a pattern of Georgia juries only giving death sentences for a particular species of murder to black defendants, or of Georgia prosecutors only seeking the death penalty when the defendant is black and the victim is white.

The necessity of an adequate check against the chance of a discriminatory death sentence in Georgia's capital sentencing scheme was first made clear by the Baldus Study discussed in *McCleskey v. Kemp*, 481 U.S. 279 (1983). The study showed that, during the 1970s, "the death penalty was assessed in 22% of cases involving black defendants and white victims . . . [but only] 1% of the cases involving black defendants and black victims; and 3% of cases involving white defendants and black victims." *McCleskey*, 481 U.S. at 286.[5] Indeed, of the forty-one (41) executions in Georgia between December 15, 1983 and May 6, 2008, the executed person's

[5] The Baldus study indicated that this racial bias was more prevalent in the midrange cases "where the decision makers have a real choice as to what to do." *McCleskey*, 481 U.S. at 287 n.5. Meaningful proportionality review is therefore a vital check against racial bias in those cases in which juries feel less compelled to impose death because the facts are neither extremely aggravated nor extremely mitigated.

crime involved black victims only three (3) times. The remaining thirty-eight (38) crimes involved white victims. Death Penalty Information Center, Execution Database, www.deathpenaltyinfo.org (last visited May 8, 2008). Thus, the statistics suggest that Georgia juries are more likely to impose a death sentence in a case involving a white victim. The race of the victim is among the most unconstitutional and arbitrary of reasons to sentence an individual to death.

In addition, the Baldus Study revealed that "prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims . . . 15% of the cases involving black defendants and black victims; and 19% of the cases involving white defendants and black victims." *McCleskey*, 481 U.S. at 287. There is little reason to believe that these trends have changed in recent years. Professor Baldus, author of the Baldus Study, has concluded as much. He reports that, according to his recent national study, "the pre-*Furman* pattern of race-of-victim discrimination persists in the post-*Furman* period, [and is] principally the product of prosecutorial decisions." David C. Baldus & George Woodworth, *Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception*, 53 DEPAUL L. REV. 1411, 1412 (2004).

Without a meaningful proportionality review that analyzes cases where life and death sentences were granted, racially discriminatory death sentences cannot and will not be identified.

e. The Supreme Court Of Georgia's Proportionality Analysis Is Constitutionally Deficient Because The Court Relies On Overturned Cases.

In addition to excluding life sentences from consideration, the Supreme Court of Georgia further compromises the integrity of its proportionality analysis by relying on overturned cases to support death sentences. The Atlanta-Journal Constitution recently documented this systemic problem in a study of the 159 cases where death sentences were upheld by the Georgia Supreme Court since 1982. Reporters discovered that eighty percent (80%) of the cases cited at least one overturned case. Bill Rankin, *A Matter of Life or Death: An AJC Special Report High Court Botched Death Reviews*, ATLANTA-JOURNAL CONSTITUTION, Sept. 26, 2007, www.ajc.com/deathpenalty (last viewed May 8, 2008). In total, the Supreme Court of Georgia cited seventy-six (76) death sentences that had been overturned for a variety of procedural or evidentiary reasons. *Id.*

Georgia's proportionality review is meant as a safeguard to "protect against the wanton and freakish imposition of the death penalty." *Zant v. Stephens*, 462 U.S. 862, 876 (1983). When the Supreme Court of Georgia supports a decision to affirm imposition of the death penalty on the basis of overturned cases, however, the court's compliance with the required proportionality review becomes meaningless and perfunctory. The court can have no way of ensuring that the jury in the relied upon case would have imposed the death penalty absent the error necessitating reversal. As a

result, comparison to such cases offers no protection against arbitrary imposition of the death penalty.

In the instant case, the Supreme Court of Georgia supported its decision to affirm Mr. Walker's death penalty by relying, in part, on *Raheem v. State*, 560 S.E.2d 680 (Ga. 2002). The court cited *Raheem* despite the fact that the same court explicitly overturned the case only months before, in *Patel v. State*, 651 S.E.2d 55 (Ga. 2007). The court's failure to ensure that it looks to only good law demonstrates a lack of diligence in conducting its proportionality review, in violation of the constitutional protections this Court should guarantee Mr. Walker.

II. THE SUPREME COURT OF GEORGIA DOES NOT COMPLY WITH STATUTORY REPORTING REQUIREMENTS, THUS THE COURT'S APPLICATION OF GEORGIA'S CAPITAL SENTENCING SCHEME IS CONSTITUTIONALLY DEFICIENT

The Supreme Court of Georgia further erred by failing to enforce the statutory requirement that the trial court must provide the necessary documentation for a thorough proportionality review. Under Georgia law, when the death penalty is imposed, the trial judge is required to submit a detailed report to the Supreme Court of Georgia. Georgia law specifically states:

> Whenever the death penalty is imposed, upon the judgment becoming final in the trial court, . . . [t]he clerk of the trial court, within ten days after receiving the transcript, shall transmit . . . a report prepared by the trial judge. . . . The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court.

Ga. Code Ann. §17-10-35(a). *See also* Ga. Code Ann. §17-10-35.1(b); Unified Appeal Rule IV(A)(3)(a); *McMichen v. State*, 265 Ga. 598, 612, 458 S.E.2d 833 (1995) (stating that the provisions of the Unified Appeal and Ga. Code. Ann. § 17-10-35(a) providing for a report of the trial court in death penalty case are constitutional). The report, attached hereto as Appendix E, includes a long list of detailed questions about the defendant, the defendant's history, the defendant's counsel and the underlying case. It is specifically designed to "determine whether there is arguably any existence of reversible error with respect to...any challenge to the jury array...or any other matter deemed appropriate by the supreme court." Ga. Code Ann. §17-10-35.1(b).

The Supreme Court of Georgia has emphasized the necessity of this report, at the same time recognizing the problems with its enforcement, when it stated "we remind judges in death penalty cases to adequately complete the report required by Ga. Code Ann § 17-10-35(a), and to transmit it to this Court as part of the record for review." *McDaniel v. State*, 271 Ga. 552, 553, 522 S.E.2d 648 (1999); *Greene v. State*, 240 Ga. 804, 804, 242 S.E.2d 587 (1978). The trial court in the instant case failed to prepare and transmit this key document. Upon reviewing the case, the Supreme Court of Georgia failed to enforce this requirement. In doing so, the Court violated Mr. Walker's constitutional rights, and offended the principle that when assessing the validity of a capital sentence, courts should "insure that every safeguard is observed." *Gregg* at 187.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that a writ of certiorari be granted to review the judgment of the Supreme Court of Georgia.

On this 12th day of May, 2008.

Respectfully Submitted,

Thomas H. Dunn with express permission by Lindsay Bennett

Thomas H. Dunn
Ga. Bar No. 234624
Georgia Resource Center
303 Elizabeth Street NE
Atlanta, GA 30307
(404) 222-9202

Attorney for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF GEORGIA	)	
	)	
	)	
vs.	)	CASE NO. S07P0687
	)	
ARTEMUS RICK WALKER	)	
	)	
	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petition for Writ of Certiorari upon the District Attorney and the Attorney General by United States mail, first class postage affixed, addressed as follows:

Cecilia M. Cooper
District Attorney
P.O. Box 1328
Americus, GA 31709

Susan V. Boleyn
Senior Assistant Attorney General, State of Georgia
40 Capitol Square, S.W.
Atlanta, Georgia 30334

This 12th day of May, 2008.

Attorney

Appendix A

282 Ga. 774, 653 S.E.2d 439

Supreme Court of Georgia.

WALKER
v.
The STATE.

No. S07P0687.

Oct. 9, 2007.

Reconsideration Denied Dec. 13, 2007.

BENHAM, Justice.

*774 Artemus Rick Walker was convicted by a jury of murder and related offenses.[1] The jury fixed Walker's sentence for the murder at death, after finding beyond a reasonable doubt the existence of multiple statutory aggravating circumstances. *See* OCGA § 17-10-30(b). For the reasons set forth below, we affirm Walker's convictions and sentences.

**443 General Grounds

1. The evidence adduced at Walker's trial showed that he devised a plan to rob Lynwood Ray Gresham, who was the vice president of the bank that was next door to the service station Walker owned. Walker hired Gary Lee Griffin several days before the crimes to work at his service station and asked Griffin if he would help "rob and kill" *775 a "rich" man. On May 12, 1999, Walker borrowed an automobile that belonged to another of his employees and drove with Griffin to the hotel where Griffin was staying. They picked up Griffin's bicycle at the hotel and then traveled in the automobile to Walker's apartment. Walker gave Griffin black pants to change into and gave him a knife and a stun gun. Walker also changed into black clothing. They also loaded Walker's bicycle into the automobile.

---

[1] The murder occurred on May 19, 1999. Walker was indicted by a Macon County grand jury on August 6, 1999, on the following charges: malice murder; felony murder; armed robbery; aggravated assault; attempted burglary; and possession of a firearm by a convicted felon. On August 23,1999, the State filed written notice of its intent to seek the death penalty. Jury selection began on September 30, 2002, in Stewart County, and, once selected, the jury was transported to Macon County for the trial. *See* OCGA § 17-7-150(a)(3). The jury found Walker guilty on all charges on October 10, 2002, and on the next day the jury recommended a death sentence for the murder. The trial court imposed the jury's death sentence for the malice murder, properly treated the felony murder conviction as mere surplusage (*see Malcolm v. State*, 263 Ga. 369(4), 434 S.E.2d 479 (1993)), and imposed a life sentence for the armed robbery and 20, 10, and 5 year consecutive sentences for the remaining convictions. Walker filed a motion for new trial on October 21, 2002, which he amended on August 25, 2005, and which the trial court denied on March 3, 2006. Walker filed a notice of appeal on March 31, 2006, his appeal was docketed in this Court on January 24, 2007, and the appeal was orally argued on April 2, 2007.

Walker drove the pair with their bicycles to a place near Gresham's house, and parked, and they rode the bicycles to Gresham's house. Griffin waited at the side of the house as Walker went to the door and engaged Gresham in a conversation in the front yard. Walker and Gresham began struggling. Walker told Griffin to use the stun gun on Gresham, but Griffin refused. Griffin also refused when Walker told him to stab Gresham with the knife. Griffin gave Walker the knife, and Walker stabbed Gresham 12 times in the chest and back. Walker told Griffin to pick up things that had fallen during the struggle, which included Gresham's keys and wallet. Walker dragged Gresham, who was still alive, to the side of the house and hid him in some bushes, where he was later found dead. Walker then told Griffin that he had "one more to kill" and asked Griffin for Gresham's keys. Walker tried to open the door to Gresham's house, but Gresham's wife, Roberta Gresham, locked a chain lock and a foot lock from inside. Roberta Gresham called the police, and she observed Walker, with whom she was familiar, through a window with "something on his hip that looked like a gun." Roberta Gresham's daughter, Allison, yelled to Walker that she had a gun. Walker and Griffin then rode away on their bicycles. Griffin was arrested nearby after he crashed his bicycle. The victim's wallet was found in Griffin's pocket, and a broken stun gun was found on Griffin's belt. Walker was arrested a few hours later after he was discovered in the woods nearby. The victim's blood was on Walker's clothes, and he had the victim's keys. The knife used to kill Gresham and a pistol were discovered near the site of Walker's arrest.

Construing the evidence in the light most favorable to the State, including Griffin's testimony and the eyewitness testimony of Roberta Gresham, we find that the evidence was sufficient to authorize a rational trier of fact to find Walker guilty on all of the charges. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). From our review of the record, it appears Walker failed to obtain a ruling on his motion for a directed verdict in the guilt/innocence phase; accordingly, the issue is waived. *Butts v. State*, 273 Ga. 760(31), 546 S.E.2d 472 (2001). Furthermore, even if the issue were preserved for appeal, we would apply "[t]he same standard of review of the evidence" as we have just applied and would conclude that there was *776 no reversible error in the trial court's not granting the motion. *Wilson v. State*, 271 Ga. 811, 813(1), 525 S.E.2d 339 (1999).

Jury Selection

2. Walker argues that the trial court erred in excusing a number of prospective jurors for hardship, some of whom he names and some whose excusals appear in pages of the record he cites. *See* OCGA § 15-12-1(a)(1); *McClain v. State*, 267 Ga. 378(1)(c), 477 S.E.2d 814 (1996) (noting trial courts' "broad discretion" in applying statutory exemptions for hardship). Our review of the record reveals that Walker failed to object to any of these excusals, despite the fact that the trial court indicated that it had prepared notes regarding its reasons for each excusal that the parties were free to inspect. By failing to object, Walker has waived his right to complain on appeal. *See Blankenship v. State*, 258 Ga. 43(3), 365 S.E.2d 265 (1988) (not addressing the excusal of two jurors about which the defendant had not objected at trial).

3. Walker argues that the trial court erred in limiting his voir dire of two prospective jurors. With respect to juror **444 Dubose, Walker affirmatively indicated that he had no further questions for the juror, and he, therefore, has waived his right to complain on appeal. *Braley v. State*, 276 Ga. 47(18), 572 S.E.2d 583 (2002). Pretermitting whether Walker also waived his right to

complain on appeal regarding any limitation placed on his voir dire of juror Reynolds, we hold that the trial court did not abuse its discretion in not continuing what was already an extensive voir dire of that juror, particularly with respect to his death penalty views. *Rhode v. State*, 274 Ga. 377(4), 552 S.E.2d 855 (2001).

Guilt/Innocence Phase

4. Walker argues that the trial court made improper comments during the guilt/innocence phase that constituted expressions of opinion. *See* OCGA § 17-8-57. We find no reversible error.

Because he failed at trial to object or move for a mistrial, Walker has waived his right to complain on appeal regarding most of the comments, including references to the trial as a "murder case," an estimate of the time that would be required for the guilt/innocence phase, reference to the trial court and the parties collectively using the word "we," comments regarding the nature of cross-examination, and questions propounded by the trial court to a witness. *See Paul v. State*, 272 Ga. 845(2), 537 S.E.2d 58 (2000). This Court has applied a "plain error" standard to comments by a trial judge that violate OCGA § 17-8-57, reversing despite the waiver of the issue where the *777 comments in question " 'seriously affect(ed) the fairness, integrity, and public reputation of th[e] judicial proceedings.'" *Id.* at 849, 537 S.E.2d 58 (quoting *Almond v. State,* 180 Ga.App. 475, 480, 349 S.E.2d 482 (1986)). The comments subject to waiver in Walker's case clearly do not meet this standard.

Walker did move for a mistrial after the trial court, in ruling on the admissibility of an item of evidence, commented on whether the item was identifiable without expert testimony as being a gun silencer. However, comments made in the course of ruling on objections are generally not the type of comments prohibited by OCGA § 17-8-57. *See Appling v. State*, 281 Ga. 590(4), 642 S.E.2d 37 (2007); *Watson v. State*, 278 Ga. 763(4), 604 S.E.2d 804 (2004). We find that the trial court's comments were not improper under the circumstances, including Walker's failure to request that his objection be heard outside the jury's presence.

5. Walker argues that the State introduced improper testimony about the victim during the guilt/innocence phase. We have held that background information about the victim that is not relevant to the issues in the guilt/innocence phase, particularly the sort of background information likely to engender the jury's sympathies, should not be presented to the jury during that phase. *See Lucas v. State*, 274 Ga. 640(2)(b), 555 S.E.2d 440 (2001). In the context of this particular case, the trial court should have sustained Walker's objection to testimony by the victim's wife in the guilt/innocence phase about the victim's church membership and his being a deacon. However, after the trial court overruled Walker's objection and Walker objected to similar, subsequent testimony, the trial court sustained Walker's new objection. Upon our review of the record, we find that the trial court's initial error with respect to this testimony was harmless beyond a reasonable doubt. *See id.* at 644, 555 S.E.2d 440.

6. Walker argues that the State failed to show chain of custody of a blood sample taken from his body; however, he waived his right to complain on appeal regarding this issue, because he failed to object at trial. *See Welch v. State*, 257 Ga. 197(3), 357 S.E.2d 70 (1987).

7. Walker argues that items seized during a search of his apartment, including tools and a gun silencer, were improperly admitted, because their probative value was outweighed by undue prejudice. We find that the trial court did not abuse its discretion in admitting these items of evidence. *See Brooks v. State*, 281 Ga. 514(3), 640 S.E.2d 280 (2007).

8. Walker argues that the prosecutor made impermissible burden-shifting arguments in three portions of his closing **445 argument in the guilt/innocence phase. Walker objected after the first portion of the argument he cites in his brief; however, he made no further objection after the trial court gave a curative instruction. Walker made no *778 objection at all regarding the other two portions of the argument that he cites in his brief. Accordingly, we find that this issue was waived at trial with regard to all three portions of the argument Walker cites insofar as the issue concerns his guilt. *See Gissendaner v. State*, 272 Ga. 704(10)(b), 532 S.E.2d 677 (2000). We also find that the arguments, even if assumed improper, do not warrant reversal of Walker's death sentence as part of our overall review of whether the death sentence was imposed under the influence of passion, prejudice, or any other arbitrary factor, because the arguments did not in reasonable probability change the jury's choice of a sentence. *See id.; Pace v. State*, 271 Ga. 829(32)(h), 524 S.E.2d 490 (1999); OCGA § 17-10-35(c)(1).

9. Walker argues that the prosecutor argued improperly by stating in his closing argument in the guilt/innocence phase that a Bible verse stating that "the wicked flee when no man pursueth" described Walker, by asking the jurors not to decide to "let the Lord handle it," and by stating that the jury might be "the Lord's fisherman to handle" the defendant's accountability for his crimes. Because he did not object at trial, this issue is waived with regard to Walker's guilt. *Gissendaner v. State, supra,* 272 Ga. at 713, 532 S.E.2d 677. We further conclude that the arguments did not result in the imposition of the death penalty through the influence of passion, prejudice, or any other arbitrary factor, because, unlike the argument in another case wherein the prosecutor improperly urged the imposition of the death penalty based upon a religious mandate, the arguments in Walker's case simply urged the jury to accept its legal duty to pass judgment rather than abdicating that role. *See id.* at 714, 532 S.E.2d 677; *Carruthers v. State*, 272 Ga. 306(2), 528 S.E.2d 217 (2000) (reversing where the prosecutor argued that religious texts mandated a death sentence). *See also King v. State*, 273 Ga. 258, 275(35), 539 S.E.2d 783 (2000) ("[S]ome discretion must be afforded to trial courts in determining whether a particular argument, whether made by the State or by a defendant, tends to urge jurors' compliance with some religious mandate in potential exclusion of their duty to consider all applicable sentencing alternatives.").

Sentencing Phase

10. Walker argues that the trial court erred in admitting a letter addressed to his co-defendant, Gary Lee Griffin, at the Macon County Jail. The letter and its envelope both indicate that Charles McKellar was the author; however, McKellar testified that he had not sent the letter and that the handwriting was not his. Although the envelope lists McKellar's address at the Leisure Estates Motel as the return address, the envelope bore a stamp that testimony showed was placed on all outgoing mail from inmates at the Sumter County Jail where *779 Walker was being held pre-trial. The letter, by promises of money and by threats, sought to convince Griffin to take full blame for the murder. Testimony showed that both Griffin and McKellar worked for Walker at the time of the murder. Walker objected at trial, arguing essentially that the letter could not be

authenticated as being written by him. Under the totality of the circumstantial evidence, we find that the trial court did not err by admitting the letter. *Johnson v. State*, 273 Ga. 872(1), 548 S.E.2d 292 (2001); *Gunter v. State*, 243 Ga. 651(4), 256 S.E.2d 341 (1979).

Pretermitting whether Walker's additional arguments regarding the letter were waived by his failure to raise them at trial, we conclude that they are meritless. The letter was relevant, and its probative value clearly outweighed any undue prejudice, because evidence of bad character is admissible in the sentencing phase. *See Braley v. State*, *supra*, 276 Ga. at 54, 572 S.E.2d 583. The letter was not inadmissible hearsay, because it was introduced as allegedly being Walker's own incriminating statement and because it was not introduced as proof of the matters asserted therein. *Tennyson v. State*, 282 Ga. 92(3), 646 S.E.2d 219 (2007); *Kellam v. State*, 260 Ga. 464(3), 396 S.E.2d 894 (1990).

**446 11. Walker argues that the trial court allowed improper victim impact testimony during the sentencing phase. We find no reversible error.

Because he did not object to most of this testimony or to the trial court's apparent failure to conduct a full hearing regarding victim impact testimony, Walker has waived his right to complain regarding those matters on appeal. *Tollette v. State*, 280 Ga. 100(11), 621 S.E.2d 742 (2005) (holding that an objection to victim impact evidence not raised in the trial court was waived). *See also Turner v. State*, 268 Ga. 213(2)(a), 486 S.E.2d 839 (1997) (recommending that trial courts conduct pre-trial hearings wherein objections to victim impact testimony can be raised).

Walker did move for a mistrial after one witness, an employee of the victim and a friend of the victim's family, testified briefly regarding her reaction to hearing news of the murder, the emotional impact the murder had on her, and how the victim had done good things for his family and for the community. The trial court instructed the jury to disregard the testimony insofar as it referred to the impact of the crime on the witness as an individual, and Walker effectively renewed his motion for a mistrial. The victim impact statute allows testimony in the sentencing phase regarding "the emotional impact of the crime on the victim, the victim's family, or the community." OCGA § 17-10-1.2. Although a trial court's discretion in controlling victim impact testimony includes the power to limit the number of witnesses who are not family members and the extent of their testimony, we *780 hold that testimony about the "emotional impact of the crime on ... the community " may include testimony by witnesses who are not family members regarding the impact the crime had on them personally. (Emphasis supplied.) *Id. See Jones v. State*, 267 Ga. 592(2)(b), 481 S.E.2d 821 (1997) (noting that this Court has granted trial courts "unusually broad discretion" in governing victim impact evidence). Because the trial court could have admitted the testimony in question without committing error, there was obviously no harm in the trial court's refusal to grant Walker's renewed motion for a mistrial.

12. Walker complains that the prosecutor made several improper arguments during the sentencing phase. Because Walker did not object to any of these arguments at trial, they would warrant reversal of his death sentence only if they were improper and if they in reasonable probability changed the sentencing verdict. *Pace v. State*, *supra*, 271 Ga. at 844, 524 S.E.2d 490; *Gissendaner v. State*, *supra*, 272 Ga. at 713-714, 532 S.E.2d 677. We find that none of the arguments in question were improper.

(a) Walker argues that the prosecutor argued improperly in the sentencing phase by suggesting that the victim might have said "a last little prayer as his life faded away." We find that the argument was not improper. Counsel enjoy "very wide" lattitude in closing arguments, and we find that this argument was not improper under our case law governing permissible references to religion in arguing in favor of a death sentence. *Conner v. State*, 251 Ga. 113(6), 303 S.E.2d 266 (1983). *See Carruthers v. State*, *supra*, 272 Ga. at 308-311, 528 S.E.2d 217; *King v. State*, 273 Ga. at 275, 539 S.E.2d 783.

(b) Walker argues that the prosecutor argued improperly by suggesting that Walker had left a gun silencer in his apartment for use in a future crime if he succeeded in the murder of the victim in this case. Upon our review of the record, we find that the argument was not improper, because there was evidence presented at trial about the silencer having been discovered in Walker's apartment and because a silencer is something likely to be used in criminal activity. *See Braley v. State*, supra, 276 Ga. at 54, 572 S.E.2d 583 ("[R]eliable evidence of bad character ... is admissible in the sentencing phase of a death penalty trial."); *Fair v. State*, 245 Ga. 868, 873(4), 268 S.E.2d 316 (1980) ("Any lawful evidence which tends to show [the defendant's] predisposition to commit other crimes is admissible in aggravation."). *Compare Henry v. State*, 278 Ga. 617(1), 604 S.E.2d 826 (2004) (reversing where there was no evidence to support the argument that the defendant would present a future danger in prison).

**447 (c) Walker argues that the prosecutor improperly expressed his opinion by using the phrase, "I think," in referring to what the jurors might be favoring as a sentencing option. Use of those words is not by *781 itself improper, and we find that the statements in question here were not improper in their contexts. *See Jackson v. State*, 281 Ga. 705(6), 642 S.E.2d 656 (2007).

(d) Walker argues that the prosecutor argued improperly by urging the jury to send a message to those who would consider similar crimes. This argument was not improper. *Pace v. State*, *supra*, 271 Ga. at 844, 524 S.E.2d 490.

Sentence Review

13. This Court is required to review each statutory aggravating circumstance and to determine if it is supported by the evidence. *See* OCGA § 17-10-35(c)(2). As part of this review, we find that the second and third statutory aggravating circumstances found by the jury in its sentencing verdict vary from the language of the Code so severely that we cannot conclude that they constitute valid statutory aggravating circumstances supported by the evidence. *See Jarrell v. State*, 261 Ga. 880(2), 413 S.E.2d 710 (1992). It is possible that the two statutory aggravating circumstances in question, which concern aggravated battery before death and torture, were submitted to the jury in support of the fifth statutory aggravating circumstance involving "depravity of mind." *See* OCGA § 17-10-30(b)(7); *West v. State*, 252 Ga. 156(2), 161 (Appendix), 313 S.E.2d 67 (1984) (prescribing a jury charge for the "depravity of mind" statutory aggravating circumstance). However, they cannot be regarded as proper statutory aggravating circumstances in their own right, because they omit critical portions of the language of the Code. Nevertheless, after setting aside these two statutory aggravating circumstances, we need not reverse Walker's death sentence, because it remains supported by at least one valid statutory aggravating circumstance. *Colwell v. State*, 273 Ga. 634(11)(d), 544 S.E.2d 120 (2001).

Viewed in the light most favorable to the sentencing verdict, we find that the evidence adduced at trial was sufficient to authorize a rational trier of fact to find beyond a reasonable doubt the existence of the remaining statutory aggravating circumstances in this case, which were as follows: that the murder was committed while Walker was engaged in an armed robbery, which is a capital felony; that the murder was committed for the purpose of receiving money or a thing of monetary value; and that the murder was outrageously or wantonly vile, horrible, or inhuman in that it involved depravity of mind. *Jackson v. Virginia, supra*; OCGA § 17-10-35(c)(2). *See* OCGA § 17-10-30(b) (2), (4), and (7).

14. This Court is required by statute to examine each death sentence and to determine if it "is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the *782 defendant." OCGA § 17-10-35(c)(3). This review concerns whether a death sentence is "excessive per se" or "substantially out of line" given the crime and the evidence regarding the defendant and whether the crime is in a category of crimes that " have so consistently ended with sentences less than death that the death penalty in any one case would be clearly disproportionate." (Citation and punctuation omitted.) *Gissendaner v. State, supra*, 272 Ga. at 716-717, 532 S.E.2d 677. Applying that standard, we conclude that the death sentence in this case is not disproportionate punishment. We have stated that our " proportionality review of death sentences includes special consideration of the sentences received by co-defendants in the same crime." *Allen v. State*, 253 Ga. 390, 395(8), 321 S.E.2d 710 (1984). In that regard, we note that Walker's co-defendant, Gary Lee Griffin, has been sentenced to imprisonment for life rather than to death. However, the evidence at Walker's trial showed Walker to be the more culpable party. Furthermore, Griffin has been adjudicated mentally retarded, making him ineligible for a death sentence. *See* OCGA § 17-7-131(a)(3), (j); *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). The cases cited in the Appendix support our conclusion that Walker's punishment is not **448 disproportionate in that each involved a deliberate plan to kill and killing for the purpose of receiving something of monetary value. *See* OCGA § 17-10-35(e).

15. Upon a review of the trial record, we find that Walker's death sentence was not imposed under the influence of passion, prejudice, or any other arbitrary factor. *See* OCGA § 17-10-35(c)(1).

Judgment affirmed.

All the Justices concur.

APPENDIX

Tollette v. State, 280 Ga. 100, 621 S.E.2d 742 (2005); *Perkinson v. State*, 279 Ga. 232, 610 S.E.2d 533 (2005); *Franks v. State*, 278 Ga. 246, 599 S.E.2d 134 (2004); *Sealey v. State*, 277 Ga. 617, 593 S.E.2d 335 (2004); *Braley v. State*, 276 Ga. 47, 572 S.E.2d 583 (2002); *Arevalo v. State*, 275 Ga. 392, 567 S.E.2d 303 (2002); *Raheem v. State*, 275 Ga. 87, 560 S.E.2d 680 (2002); *King v. State*, 273 Ga. 258, 539 S.E.2d 783 (2000); *Jones v. State*, 273 Ga. 231, 539 S.E.2d 154 (2000); *Esposito v. State*, 273 Ga. 183, 538 S.E.2d 55 (2000); *Gissendaner v. State*, 272 Ga. 704, 532 S.E.2d 677 (2000); *Lee v. State*, 270 Ga. 798, 514 S.E.2d 1 (1999); *Whatley v. State*, 270 Ga.

296, 509 S.E.2d 45 (1998); *DeYoung v. State*, 268 Ga. 780, 493 S.E.2d 157 (1997); *Jones v. State*, 267 Ga. 592, 481 S.E.2d 821 (1997); *Carr v. State*, 267 Ga. 547, 480 S.E.2d 583 (1997); *Greene v. State*, 268 Ga. 47, 485 S.E.2d 741 (1997) (affirming on facts set forth in *Greene v. State*, 266 Ga. 439, 469 S.E.2d 129 (1996)); *Crowe v. State*, 265 Ga. 582, 458 S.E.2d 799 (1995); *783 *Mobley v. State*, 265 Ga. 292, 455 S.E.2d 61 (1995); *Ledford v. State*, 264 Ga. 60, 439 S.E.2d 917 (1994); *Ferrell v. State*, 261 Ga. 115, 401 S.E.2d 741 (1991).

Appendix B

SUPREME COURT OF GEORGIA

Case No. S07P0687 Atlanta, December 13, 2007

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ARTEMUS RICK WALKER v. THE STATE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Therese S. Barnes, Clerk

Appendix C

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

February 27, 2008

Mr. Thomas H. Dunn
Georgia Resource Center
303 Elizabeth St., NE
Atlanta, GA 30307

Re: Artemus Rick Walker
v. Georgia
Application No. 07A714

Dear Mr. Dunn:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on February 27, 2008 extended the time to and including May 11, 2008.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by

Erik A. Fossum
Case Analyst

Appendix D

RELEVANT PROVISIONS OF THE OFFICIAL CODE OF GEORGIA ANNOTATED

§ 17-10-30. Procedure for imposition of death penalty generally

(a) The death penalty may be imposed for the offenses of aircraft hijacking or treason in any case.

(b) In all cases of other offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating circumstances which may be supported by the evidence:

(1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony;

(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery, or the offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree;

(3) The offender, by his act of murder, armed robbery, or kidnapping, knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person;

(4) The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value;

(5) The murder of a judicial officer, former judicial officer, district attorney or solicitor-general, or former district attorney, solicitor, or solicitor-general was committed during or because of the exercise of his or her official duties;

(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person;

(7) The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim;

(8) The offense of murder was committed against any peace officer, corrections employee, or firefighter while engaged in the performance of his official duties;

(9) The offense of murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement;

(10) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another; or

(11) The offense of murder, rape, or kidnapping was committed by a person previously convicted of rape, aggravated sodomy, aggravated child molestation, or aggravated sexual battery.

(c) The statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. Except in cases of treason or aircraft hijacking, unless at least one of the statutory aggravating circumstances enumerated in subsection (b) of this Code section is so found, the death penalty shall not be imposed.

§ 17-10-35. Review of death sentences

(a) Whenever the death penalty is imposed, upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of Georgia. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court.

(b) The Supreme Court shall consider the punishment as well as any errors enumerated by way of appeal.

(c) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) Whether, in cases other than treason or aircraft hijacking, the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in subsection (b) of Code Section 17-10-30; and

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(d) Both the defendant and the state shall have the right to submit briefs within the time provided by the court and to present oral argument to the court.

(e) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(1) Affirm the sentence of death; or

(2) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court in its decision and the extracts prepared as provided for in subsection (a) of Code Section 17-10-37 shall be provided to the resentencing judge for his consideration.

(f) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence.

§ 17-10-35. Review of death sentences

(a) Whenever the death penalty is imposed, upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of Georgia. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court.

(b) The Supreme Court shall consider the punishment as well as any errors enumerated by way of appeal.

(c) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) Whether, in cases other than treason or aircraft hijacking, the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in subsection (b) of Code Section 17-10-30; and

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(d) Both the defendant and the state shall have the right to submit briefs within the time provided by the court and to present oral argument to the court.

(e) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(1) Affirm the sentence of death; or

(2) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court in its decision and the extracts prepared as provided for in subsection (a) of Code Section 17-10-37 shall be provided to the resentencing judge for his consideration.

(f) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence.

Appendix E

REPORT OF THE TRIAL JUDGE
OF THE
SUPERIOR COURT OF _____COUNTY, GEORGIA

THE STATE v. _____
(A case in which the death penalty was imposed)

A. DATA CONCERNING THE DEFENDANT

1. Name_____ 2. Date of Birth_____
Last First Middle MM/DD/YY

3. Sex: M [ ] F [ ]

4. Race: Black [ ] White [ ] Other_____

5. Marital Status: Never married [ ] Married [ ] Separated [ ] Divorced [ ] Spouse deceased [ ]

6. Number of children: _____; and ages:_____.

7. Father living: Yes [ ] No [ ], died 19_____.
Mother living: Yes [ ] No [ ], died 19_____.

8. Number of brothers and sisters_____.

9. Education completed:_____.

10. Intelligence level: (IQ below 70) Low [ ]
(IQ 70 to 100) Medium [ ]
(IQ above 100) High [ ]

11. Psychiatric evaluation performed? Yes [ ] No [ ]
If performed is defendant:

		Yes	No
a.	Able to distinguish right from wrong?	[ ]	[ ]
b.	Able to adhere to the right?	[ ]	[ ]
c.	Able to cooperate intelligently in his own defense?	[ ]	[ ]

12. If examined, were character or behavior disorders found?
Yes [ ] No [ ]

13. What other pertinent psychiatric (and psychological) information was revealed?
_____

14. Prior work record of defendant:

	Type job	Salary	Dates held	Reason for termination
a.				
b.				
c.				
d.				
e.				

B. DATA CONCERNING THE TRIAL

1. How did the defendant plead?_____
2. Was the guilt-phase of the case tried before a jury?_____
3. Was the sentencing phase tried before a jury?_____

C. OFFENSE RELATED DATA

1. Offense(s) for which the defendant received a death sentence:

a._____ b._____

c._____ d._____

2. If other offenses were tried in the same trial list those offenses:

a._____ b._____

c._____ d._____

3. Which of the following statutory aggravating circumstances were instructed and which were found?

			Instructed	Found
a.		The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony.	[ ]	[ ]
b.	(1)	The offense of murder, rape, armed robbery or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery or	[ ]	[ ]

		Instructed	Found
	(2) The offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.	[ ]	[ ]
c.	The offender by his act of murder, armed robbery or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.	[ ]	[ ]
d.	The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.	[ ]	[ ]
e.	The murder of a judicial officer, former judicial officer, district attorney or solicitor-general or former district attorney or solicitor-general during or because of the exercise of his official duty.	[ ]	[ ]
f.	The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	[ ]	[ ]
g.	The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.	[ ]	[ ]
h.	The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.	[ ]	[ ]
i.	The offense of murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement.	[ ]	[ ]
j.	The murder was committed for the purpose of avoiding, interfering with, or preventing, a lawful arrest or custody in a place of lawful confinement, of himself or another.	[ ]	[ ]

4. List significant nonstatutory aggravating circumstances indicated by the evidence:

a. _____

b. _____

c. _____

d. _____

5. Which, if any, of the following mitigating circumstances was in evidence?

a. The defendant has no significant history of prior criminal activity. [ ]

b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. [ ]

c. The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act. [ ]

d. The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct. [ ]

e. The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor. [ ]

f. The defendant acted under duress or under the domination of another person. [ ]

g. At the time of the murder, the capacity of the defendant to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication. [ ]

h. The youth of the defendant at the time of the crime. [ ]

i. The evidence, although sufficient to sustain the conviction, does not foreclose all doubt respecting the defendant's guilt. [ ]

j. Other. [ ]
Please explain if (j) is checked: _____

_____

_____

6. If tried with a jury, was the jury instructed to consider mitigating circumstances? Yes [ ] No. [ ]

7. Does the defendant's physical or mental condition call for special consideration? Yes [ ] No. [ ]

8. Was the victim related by blood or marriage to defendant? Yes [ ] No. [ ]
If yes, what relationship?_____

9. Was the victim an employer or employee of defendant? No [ ]
Employer [ ] Employee [ ]

10. Was the victim acquainted with the defendant? No [ ]
Casual acquaintance [ ] Friend [ ]

11. Was the victim a local resident or transient in the community?
Resident [ ] Transient [ ]

12. Was the victim the same race as defendant? Yes [ ] No. [ ]

13. Was the victim the same sex as the defendant? Yes [ ] No. [ ]

14. Was the victim held hostage during the crime? No [ ]
yes - less than an hour [ ] yes - more than an hour [ ]

15. The victim's reputation in the community was:
Good [ ] Bad [ ] Unknown [ ]

16. Was the victim tortured? Yes [ ] No. [ ]
If yes, state extent of torture:_____

_____

_____

_____

17. What was the age of the victim? _____

18. If a weapon was used in commission of the crime, was it:
No weapon used [ ] Blunt instrument [ ] Poison [ ]
Motor vehicle [ ] Sharp instrument [ ] Firearm [ ]

19. Does the defendant have a record of prior convictions? Yes [ ] No. [ ]

20. If answer is yes, list the offenses, the dates of the offenses, and the sentences imposed.

Offense	Date of offense	Sentence imposed

a._____

b._____

c._____

d._____

21. Was there evidence the defendant was under the influence of narcotics or dangerous drugs at the time of the offense? Yes [ ] No [ ]

D. Representation of defendant

(If more than one counsel served, answer these questions as to each counsel and attach to this report.)

1. Date counsel secured:_____

2. How was counsel secured: a. retained by defendant [ ]
   b. appointed by court [ ]

3. If counsel was appointed by court was it because

   a. Defendant was unable to afford counsel? [ ]
   b. Defendant refused to secure counsel? [ ]
   c. Other (explain)_____

_____

4. How many years has counsel practiced law?
   a. 0 to 5 [ ] b. 5 to 10 [ ] c. over 10 [ ]

5. What is the nature of counsel's practice?
   a. mostly civil [ ] b. general [ ] c. mostly criminal [ ]

6. Did the same counsel serve throughout the trial? Yes [ ] No [ ]

7. If not, explain in detail. _____

_____

_____

_____

E. GENERAL CONSIDERATIONS

1. Did race appear as an issue in the trial? Yes [ ] No [ ]

2. Was there extensive publicity in the community concerning the case?
   Yes [ ] No [ ]

3. Was the jury impermissibly influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [ ]

4. In answer is yes, explain:_____

5. In your opinion, was the death sentence imposed in this case appropriate?
   Yes [ ] No [ ]
   General comments concerning your answer:_____

F. FORMS FOR REQUIRED JURY CERTIFICATES

These certificates are required by Rule II (A) (6)
of the Unified Appeal Procedure.
(NOTE: To convert a decimal number to percentage notation, move the decimal point two places to the right. Example: .055 = 5.5%)

Grand Jury Certificate

This court has reviewed the Grand Jury List for_____County from which the grand jury was selected that rendered the indictment in this case. This Grand Jury List was last revised in the year ____.

The following categories are "cognizable groups" in this county within the meaning of the Unified Appeal and current state and federal law:

A. Males B. Females C. African Americans D. Whites
E. _____ F. _____

The total county population according to the most recent decennial census is _____ .
The total county population over 18 years old, according to the most recent census is _____.
The total number of persons on the grand jury list is _____.

For each "cognizable group" listed above, calculate the percentage of the over-18 population of the county represented by the cognizable group, as follows:

A. Males
1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group A (males) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of males on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

B. Females
1. The total population over 18 years old in the county is _____
2. The total population of cognizable group B (females) is _____
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of females on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

C. African Americans
1. The total population over 18 years old in the county is _____
2. The total population of cognizable group C (African Americans) is _____
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of African Americans on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

D. Whites
1. the total population over 18 years old in the county is _____
2. the total population of cognizable group D (whites) is _____
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of whites on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

E. _____
1. The total population over 18 years old in the county is _____
2. The total population of cognizable group E is _____
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%

4. The number of people on the grand jury list is _____.
5. The number of cognizable group E on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

F. _____
1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group F is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the grand jury list is _____.
5. The number of cognizable group F on the grand jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

....

This court is satisfied that the identified cognizable groups are adequately represented on the grand jury list.

Traverse Jury Certificate

This court has reviewed the Traverse Jury List for_____County from which the defendant's traverse jury panel will be selected. This Traverse Jury List was last revised in the year ____.

The following categories are "cognizable groups" in this county within the meaning of the Unified Appeal and current state and federal law:

A. Males B. Females C. African Americans D. Whites
E. _____ F. _____

The total county population according to the most recent decennial census is _____ .
The total county population over 18 years old, according to the most recent census is _____.
The total number of persons on the traverse jury list is _____.

For each "cognizable group" listed above, calculate the percentage of the over-18 population of the county represented by the cognizable group, as follows:

A. Males
1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group A (males) is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of males on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

B. Females
1. The total population over 18 years old in the county is _____
2. The total population of cognizable group B (females) is _____
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of females on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

C. African Americans
1. The total population over 18 years old in the county is _____
2. The total population of cognizable group C (African Americans) is _____
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of African Americans on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

D. Whites
1. the total population over 18 years old in the county is _____
2. the total population of cognizable group D (whites) is _____
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of whites on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

E. _____
1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group E is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%

4. The number of people on the traverse jury list is _____.
5. The number of cognizable group E. on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

F. _____
1. The total population over 18 years old in the county is _____.
2. The total population of cognizable group F is _____.
3. Divide answer 2 by answer 1, move the decimal 2 places to the right: _____%
4. The number of people on the traverse jury list is _____.
5. The number of cognizable group F on the traverse jury list is _____.
6. Divide answer 5 by answer 4, move the decimal 2 places to the right: _____%
7. Subtract the larger from the smaller; the difference must be less than 5%: _____%

....

This court is satisfied that the identified cognizable groups are adequately represented on the traverse jury list.

G. CHRONOLOGY OF CASE

			Elapsed Days
1.	Date of offense	_____	
2.	Date of arrest	_____	_____
3.	Date trial began	_____	_____
4.	Date sentence imposed	_____	_____
5.	Date motion for new trial ruled on	_____	_____
6.	Date trial judge's report completed	_____	_____
7.	Date received by Supreme Court*	_____	_____
8.	Date sentence review completed	_____	_____
9.	Total elapsed days*	_____	_____

(*To be completed by Supreme Court.)

This report was submitted to the defendant's counsel for such comments as counsel desired to make concerning the factual accuracy of the report, and

1. Defense counsel's comments are attached [ ]
2. Defense counsel offered no comments [ ]
3. Defense counsel has not responded [ ]

_____

(Date) Judge, Superior Court of

_____ County

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF GEORGIA,	)	
	)	
	)	
vs.	)	CASE NO. S07P0687
	)	
ARTEMUS RICK WALKER,	)	
	)	
	)	
_____	)	

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, ARTEMUS RICK WALKER, respectfully asks for leave to file the Petition for Certiorari, submitted herewith without prepayment of fees or costs, and to proceed in forma pauperis.

Petitioner's Affidavit of Poverty is attached hereto as Exhibit "A".

This the 12th day of May, 2008.

Respectfully submitted,

Thomas H. Dunn with express permission by Tinkay Bennett

Thomas H. Dunn
Ga. Bar No. 234624
Georgia Resource Center
303 Elizabeth Street NE
Atlanta, GA 30307
(404) 222-9202

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF GEORGIA	)	
	)	
	)	
vs.	)	CASE NO. S07P0687
	)	
ARTEMUS RICK WALKER	)	
	)	
	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon the District Attorney and the Attorney General by United States mail, first class postage affixed, addressed as follows:

Cecilia M. Cooper
District Attorney
P.O. Box 1328
Americus, GA 31709

Susan V. Boleyn
Senior Assistant Attorney General, State of Georgia
40 Capitol Square, S.W.
Atlanta, Georgia 30334

This 12th day of May, 2008.

Lindsay Kennedy
Attorney