

UNIFIED APPEAL PROCEDURE

TABLE OF CONTENTS

INTRODUCTION.....	1
RULE I. STATEMENT OF PURPOSES.....	1
A. Purposes of the Outline of Proceedings.....	1
B. Purposes of the Checklist.....	1
RULE II. PRE-TRIAL PROCEEDINGS.....	2
A. Qualifications of Appointed Counsel.....	2
B. Counsel for Indigent Defendants.....	3
C. First Proceeding.....	3
D. Motion Hearing.....	5
E. Forms For Required Jury Certificates (Superseded).....	5
F. Pre-trial Review Hearing.....	5
G. Forms for Pre-trial Reports.....	7
H. Pre-trial Review in the Supreme Court.....	7
RULE III. TRIAL PROCEEDINGS.....	8
A. Guilt/Innocence Phase.....	8
B. Sentencing Phase.....	9
RULE IV. REVIEW PROCEEDINGS.....	11
A. In the Superior Court.....	11
B. In the Supreme Court.....	12
CHECKLIST.....	14
PART I. PRE-TRIAL.....	14
PART II. INTERIM REVIEW.....	16
PART III. TRIAL PROCEEDINGS: GUILT/INNOCENCE PHASE.....	17
PART IV. TRIAL PROCEEDINGS: SENTENCING PHASE.....	19
PART V. MOTION FOR NEW TRIAL.....	23
PART VI. REVIEW IN THE SUPREME COURT.....	23
PART VII. RETRIAL AS TO SENTENCE.....	24
APPENDIX: FORM FOR THE REPORT OF THE TRIAL JUDGE.....	25

OUTLINE OF PROCEEDINGS

INTRODUCTION

The Uniform Appeal Procedure is promulgated by the Supreme Court pursuant to OCGA § 17-10-36 (a) and (b). The revised Unified Appeal Procedure should be followed beginning on January 1, 2014. The proceedings outlined here shall be applicable only in cases in which the death penalty is sought.

NOTE

All proceedings in the superior court shall be recorded and transcribed. The defendant shall be present during all proceedings in the superior court.

RULE I. STATEMENT OF PURPOSES

A. Purposes of the Outline of Proceedings. The Outline of Proceedings is a procedure to be followed before, during, and after trial, having as its purposes:

1. Ensuring that all legal issues that ought to be raised on behalf of the defendant have been considered by the defendant and defense counsel and asserted in a timely and correct manner.
2. Minimizing the occurrence of error and correcting as promptly as possible any error that nonetheless may occur.
3. Making certain that the record and transcripts of the proceedings are complete for unified review by the sentencing court and by the Supreme Court.

B. Purposes of the Checklist.

1. Appended to the Outline of Proceedings is a Checklist of legal issues that may arise in a death penalty case. Its purpose is to remind the court, defense counsel, and the prosecuting attorney of these issues and to provide a quick reference to case authority on issues specific to death penalty trials. The parties may raise any issue, regardless of whether or not it is listed on the Checklist. The Checklist will be revised and updated periodically.
2. Proper use of the Checklist as a means of avoiding or promptly correcting error will require the court to schedule conferences (see Rules II and III) during which defense counsel and the prosecuting attorney will be given an opportunity to present, or to schedule for presentation, issues that would be waived if not asserted in the proper and timely fashion. These conferences shall be transcribed by the official court reporter.

RULE II. PRE-TRIAL PROCEEDINGS

A. Qualifications of Appointed Counsel. In order to ensure that persons are adequately represented in death penalty cases, any attorney appointed to serve as either lead or co-counsel is required to meet the following minimum qualifications:

1. *Trial.* Two attorneys shall be appointed to handle matters in death penalty cases:

a. Lead Counsel

(1) must be a member in good standing of the State Bar or admitted to practice pro hac vice, and must have at least five years criminal litigation experience as a criminal defense attorney or a prosecuting attorney; and

(2) must have been lead counsel on at least one death penalty murder trial to verdict or three capital (non-death penalty) trials to verdict, one of which must have been a murder case, or been co-counsel on two death penalty cases; and

(3) must be familiar with the Unified Appeal Procedure; and

(4) must be familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and

(5) must have attended within twelve months previous to appointment at least ten hours of specialized training or educational programs in death penalty defense or, upon appointment, agree to take ten hours of such training or educational programs and maintain annually during the pendency of the case ten hours of such training or educational programs. This requirement may be met by viewing video-recorded instruction and written materials and certifying to the trial court that the materials have been reviewed; and

(6) must have demonstrated the necessary proficiency and commitment that exemplify the quality of representation appropriate to capital cases.

b. Co-counsel

(1) must be a member in good standing of the State Bar with combined three years of criminal trial experience either as a criminal defense attorney or a prosecuting attorney; and

(2) must have been lead or co-counsel in at least one (non-death penalty) murder trial to verdict, or in at least two felony jury trials; and

(3) must have attended within twelve months previous to appointment at least ten hours of specialized training or educational programs in death penalty defense or, upon appointment, agree to take ten hours of such training or educational programs and maintain annually during the pendency of the case ten hours of such training or educational programs. This requirement may be met by viewing video-recorded instruction and written materials and certifying to the trial court that the materials have been reviewed.

2. *Direct Appeal.* It is recommended that two attorneys be appointed to handle matters on a direct appeal, unless the appointing authority decides for good cause that it is not necessary to have co-counsel.

a. Lead Counsel

(1) must be a member in good standing of the State Bar or admitted to practice pro hac vice and must have at least five years criminal litigation experience as a criminal defense attorney or a prosecuting attorney; and

(2) must have been co-counsel, or have actively assisted in the direct appeal of at least one death penalty case and have been counsel of record in at least three felony appeals; and

(3) must have attended within twelve months previous to appointment at least ten hours of specialized training or educational programs relating to post-conviction appeals and appellate procedures relating to post-conviction appeals or, upon appointment, agree to take ten hours of such training or educational programs and maintain annually during the pendency of the case ten hours of such training or educational programs. This requirement may be met by viewing video-recorded instruction and written materials and certifying to the trial court that the materials have been reviewed.

b. Co-counsel

(1) must be a member in good standing of the State Bar with combined three years of criminal trial experience either as a criminal defense attorney or a prosecuting attorney; and

(2) must have experience as counsel of record in three felony appeals either as a criminal defense attorney or a prosecuting attorney; and

(3) must have attended within twelve months previous to appointment at least ten hours of specialized training or educational programs relating to post-conviction appeals and appellate procedures relating to post-conviction appeals or, upon appointment, agree to take ten hours of such training or educational programs and maintain annually during the pendency of the case ten hours of such training or educational programs. This requirement may be met by viewing video-recorded instruction and written materials and certifying to the trial court that the materials have been reviewed.

3. *Exceptions for Good Cause.* The enforcement of these minimum qualifications rests with the trial courts and the Supreme Court. If a trial judge finds that an attorney is otherwise competent but does not meet these standards, the judge shall petition the Supreme Court prior to the First Proceeding (Rule II (C)) under the Unified Appeal Procedure for authorization to appoint the attorney by specifying the attorney's qualifications and stating the reasons the trial judge has determined that the attorney is competent to serve as either lead or co-counsel.

B. Counsel for Indigent Defendants. The trial court shall ensure that representation of indigent defendants has been arranged in conformity with the law. See OCGA § 17-12-1 et seq.

C. First Proceeding. At the earliest possible opportunity after indictment and before arraignment, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the first proceeding:

1. The prosecuting attorney shall state whether he or she intends to seek the death penalty. If the prosecuting attorney intends to seek the death penalty, a written notice of such intention shall be prepared and filed with the clerk of the superior court. Within ten days of receiving this notice, the clerk of the superior court shall send a copy to the clerk of the Supreme Court. (If the prosecuting attorney does not seek the death penalty, these procedures and the Checklist are not applicable. If the prosecuting attorney later abandons seeking the death penalty or the sentencing jury returns a verdict of life imprisonment, these procedures and the Checklist are no longer applicable.)
2. Defense counsel shall be identified, it shall be made a matter of record whether they are retained or appointed, and, if appointed, the qualifications required by Rule II (A) (1) or the fact that an exception for good cause has been granted under Rule II (A) (3) shall be specifically reported.
3. The Unified Appeal Procedure, as amended, shall be published on the Supreme Court website (www.gasupreme.us). Copies of this procedure shall be given to the defendant, defense counsel, and the prosecuting attorney, all of whom shall be instructed to read and adhere to its provisions. A copy also shall be given to the reporter for inclusion in the record. The reporter shall be reminded that the trial shall be completely transcribed as set forth in Rule IV (A). Defense counsel shall be instructed that the Outline and Checklist are intended to assist them in protecting the defendant's rights, but it remains the responsibility of defense counsel to protect those rights; the Outline and Checklist do not take the place of diligent counsel actively representing the defendant.
4. Defense counsel shall be reminded of the defendant's option to invoke the provisions of Georgia's Criminal Procedure Discovery Act, OCGA § 17-16-1 et seq. If the defendant elects to participate in reciprocal discovery, both parties shall be reminded that the information provided shall be accurate and complete.
5. The court shall determine whether the defendant intends to challenge the array of the grand or traverse jury. Challenges to the composition of the boxes from which the grand or traverse jury is drawn, and challenges to the manner in which the grand or traverse jury is drawn, shall be presented and heard at the earliest possible time consistent with the court's calendar and with the right of the defendant to seek a continuance. If a challenge is presented, the court shall hear the asserted factual and legal basis of challenge although under law the right to challenge may have been waived.
6. Whether or not a challenge is presented, the court shall nonetheless review the certificate provided with the county master jury list to determine that the inclusiveness percentage meets the threshold requirement established by the Jury Composition Rule. If the inclusiveness threshold is met in the certificate, that shall establish a prima facie case that the county master jury list represents a fair cross-section of the community. This rule shall not be construed to deprive the defendant of any rights under the constitutions of the United States and the State of Georgia. The court's findings shall be included in the Report of the Trial Judge in the form provided in the Appendix.
7. The court shall give the defendant an opportunity to state any objections to defense counsel or to the manner in which defense counsel have conducted or are conducting the defense.
8. The court shall review Part I of the Checklist with defense counsel and the prosecuting attorney to determine which pre-trial issues the defendant intends to raise. Hearings shall be scheduled for any issues the defense wishes to present. The defendant shall be reminded that issues not raised may be waived if not timely presented.

9. The court shall instruct defense counsel to locate and interview all persons whose testimony might be helpful in discovering or supporting available theories (1) of defense or (2) in mitigation of punishment.

10. The court shall schedule for an appropriate time an arraignment and plea on the merits of the indictment.

D. Motion Hearing. At an appropriate time consistent with the court's calendar and with the right of the defendant to seek a continuance, the court shall conduct a motion hearing. The defendant shall be present, accompanied by defense counsel. The hearing shall be recorded and transcribed. The hearing shall precede trial of the case.

The following matters shall be concluded during the motion hearing:

1. All motions previously filed shall be heard.

2. The court shall review Part I of the Checklist with defense counsel and the prosecuting attorney to determine if there are possible pre-trial issues that have not been raised. The court shall determine during this conference whether defense counsel intend to allow the deadline for raising of any such issue to pass without presenting the issue for decision. If so, the court shall question defense counsel in the presence of the defendant to determine whether defense counsel have explained the defendant's rights regarding that issue and whether defense counsel and the defendant have agreed not to assert the issue.

3. The court shall remind defense counsel to be prepared to present evidence during the sentencing phase as well as the guilt-innocence phase of the trial.

4. The court shall give the defendant an opportunity to state any objections to defense counsel or to the manner in which defense counsel have conducted or are conducting the defense.

5. The court reporter shall be advised that all pre-trial proceedings and hearings should be transcribed prior to trial.

E. Forms For Required Jury Certificates (superseded by the Jury Composition Rule).

F. Pre-trial Review Hearing.

1. After the completion of all pre-trial proceedings, the trial court shall conduct a hearing to determine if an interim appellate review of pre-trial rulings is appropriate. The trial court shall hear from the state and the defense as to whether the delay to be caused by interim appellate review outweighs the need for such review. If the trial court concludes that interim appellate review would not serve the ends of justice in the case, the trial court shall enter an order so stating and declaring the case stands ready for trial. An order obviating interim appellate review shall not be appealable. See OCGA § 17-10-35.2.

2. If the trial court concludes that interim appellate review of the pre-trial proceedings is appropriate, the trial court shall order such review and initiate the procedure by filing in the office of the clerk

of superior court and delivering to the parties a report certifying that all pre-trial proceedings in the case have been completed. See OCGA § 17-10-35.1. The report of the trial court shall state whether there is arguably any reversible error with respect to any of the following matters:

- a. Any proceedings with respect to change of venue;
- b. Any proceedings with respect to recusal of the trial judge;
- c. Any challenge to the jury array;
- d. Any motion to suppress evidence;
- e. Any motion to exclude statements by the defendant;
- f. Any motion for psychiatric or other mental or physical evaluation;
- g. Any motion for additional legal, investigative, or expert assistance; and
- h. Any other pre-trial matter that may arguably result in reversible error.

i. If the trial court determines that there is arguably any reversible error with respect to any ex parte proceedings, the report of the trial court shall so state and shall identify the issue in a manner that does not disclose ex parte communications.

3. Within ten days after the filing of the report of the trial court or the filing of the transcripts of the proceedings, whichever is later, the prosecutor and the defendant may each seek review of any areas of the pre-trial proceedings in which reversible error may arguably have occurred by filing with the clerk of the superior court, and not in the Supreme Court, a report on the appropriateness of interim review. Either party may consolidate with such a report an application to appeal any order, decision, or judgment entered in the case. Any application for appeal shall be in the form of a petition and shall set forth the need for such an appeal and the issue or issues to be resolved.

- a. The application shall include citations to those portions of the record that pertain to each of the issues as to which review is sought;
- b. The application shall also include copies of the order or orders to be reviewed;
- c. No certificate of immediate review shall be required for the filing of such application for appeal.

d. Copies of the report and/or application shall be served upon the opposing party and the Attorney General in the manner prescribed by OCGA § 5-6-32, except that such service shall be perfected at or before the filing of the report and/or application.

4. The time for filing a report and/or application may be extended by the trial court upon a showing of good cause for doing so. No requests for extensions of time for filing a report and/or application shall be filed in the Supreme Court.

5. The opposing party shall not be required or permitted to respond in the superior court to an application for appeal.

6. Any application for appeal that seeks review of any order, decision, or judgment entered ex parte shall so state and shall identify the issue in a manner that does not disclose confidential information. Such application shall be accompanied by a separate ex parte application in the form described above. Copies of the separate ex parte application shall not be served on the opposing party or the Attorney General.

7. Upon the filing of the reports and/or applications by both parties, or upon the expiration of the time for filing as may have been extended by the trial court, the clerk of superior court shall immediately transmit to the Supreme Court a copy of the entire record, including the report of the trial court and any reports and/or applications of the parties. A copy of all of the foregoing shall also be delivered by the clerk of the superior court to the Attorney General, except the clerk of the superior court shall transmit to the Supreme Court under seal any ex parte proceedings in the record without furnishing a copy to the Attorney General.

G. Forms for Pre-trial Reports.

Report of the _____ (Judge, District Attorney, or Defense Counsel)

Is there arguably reversible error with respect to any of the following matters? If so, describe the pertinent factual and legal issues:

- (1) Any proceedings with respect to change of venue;
- (2) Any proceedings with respect to recusal of the trial judge;
- (3) Any challenge to the jury array;
- (4) Any motion to suppress evidence;
- (5) Any motion to exclude statements by the defendant;
- (6) Any motion for psychiatric or other mental or physical evaluation;
- (7) Any motion for additional legal, investigative, or expert assistance;
- (8) Any other pre-trial matter that may arguably result in reversible error.
- (9) If the trial court or defense counsel determines that there is arguably any reversible error with respect to any ex parte proceedings, the report of the trial court or defense counsel shall so state and shall identify the issue in a manner that does not disclose ex parte communications.

H. Pre-trial Review in the Supreme Court.

- 1. The Supreme Court shall issue an order granting review of the pre-trial proceedings, or portions thereof, or denying review within 45 days of the date on which the case is docketed. The order of the Supreme Court shall identify the matters that shall be subject to review, and such matters may include, but need not be limited to, any matters called to the court's attention in any of the reports and/or applications for appeal.
- 2. If review is granted by the Supreme Court, no notice of appeal need be filed. The order granting review shall specify the period of time within which each party shall file briefs and responsive briefs as to matters identified in the order granting review. Oral argument in such an appeal will be mandatory.
- 3. Pre-trial review of any matter as provided for herein, as to any question passed on in such review, shall be res judicata as to such question and shall be deemed to be the law of the case.

4. This pre-trial review procedure shall not apply to any ruling or order made, invoked, or sought subsequent to the filing of the report of the trial court.

5. The failure of either party to assert its rights under this pre-trial review procedure, or the failure of the Supreme Court to grant review, shall not affect the right to post-trial review of any question that could be raised under this procedure, and shall not constitute an adjudication as to such question.

RULE III. TRIAL PROCEEDINGS

A. Guilt/Innocence Phase.

1. *Before Commencement of Trial.* Immediately before trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference:

- a. All pending motions shall be heard.
- b. The court shall determine whether there are any last-minute motions the defense wishes to present and give the prosecuting attorney and defense counsel an opportunity to present any stipulations to which they have agreed.
- c. The court shall ascertain whether counsel for both sides have reviewed Part III (A) through (H) of the Checklist and are prepared to raise any possible trial issues in a timely manner.
- d. The court shall give the defendant an opportunity to state any objections he or she may have to defense counsel or to the manner in which defense counsel have conducted or are conducting the defense.

2. *After Close of the Evidence.* After close of the evidence, but before closing arguments, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference after close of the evidence:

- a. Written requests to charge shall be presented to the court for rulings.
- b. The court shall make a final ruling on any issues as to which a tentative ruling or no ruling was made during presentation of the evidence.
- c. The court shall hear any timely and otherwise proper motions or objections the defense wishes to present. Defense counsel shall be given an opportunity to perfect the record by making a tender of proof as to any evidence that was excluded by the court.

d. The court shall ascertain whether the parties have reviewed Part III (I) through (Q) of the Checklist and are prepared to raise these issues in a timely manner. Defense counsel shall be advised that objections to the state's closing argument will be waived if not raised as soon as grounds for such objection arise, unless explicit permission is granted to reserve objection until the conclusion of argument.

e. The court shall give the defendant an opportunity to state any objections he or she may have to defense counsel or to the manner in which defense counsel have conducted or are conducting the defense.

3. *After Charge of the Court.* After charge of the court, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference after charge of the court:

a. Any issue as to arguments of counsel or as to the charge of the court shall be presented and decided.

b. The court shall hear any timely and otherwise proper motions or objections the defense wishes to present.

c. The court shall give the defendant an opportunity to state any objections he or she may have to defense counsel or to the manner in which defense counsel have conducted or are conducting the defense.

B. Sentencing Phase.

1. *Before Commencement of Sentencing Phase.* Immediately before the commencement of the sentencing phase of the trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be taken up during the conference:

a. All pending motions shall be heard.

b. The court shall review Part IV of the Checklist with defense counsel and the prosecuting attorney. Defense counsel shall be given the opportunity to raise in limine any objections to the state's anticipated evidence in aggravation. However, failure to object in limine shall not amount to a waiver of otherwise timely objections to the introduction of evidence. The court shall give the prosecuting attorney and defense counsel an opportunity to present any stipulations to which they have agreed.

c. In the event of a retrial as to sentence, the court shall also review Part VII of the Checklist with defense counsel and the prosecuting attorney.

2. *After Close of the Evidence.* After the close of the evidence, but before closing arguments, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference:

- a. Written requests to charge shall be presented to the court for rulings.
- b. The court shall make a final ruling on any issues raised during the sentencing phase of the trial as to which a tentative ruling or no ruling was made during the presentation of the evidence.
- c. The court shall again review Part IV of the Checklist with defense counsel and the prosecuting attorney and shall hear any timely and otherwise proper motions or objections the defense wishes to present. Defense counsel shall be given an opportunity to perfect the record by making a tender of proof as to any evidence that was excluded by the court. If the court determines that a mistake was made in the exclusion of potentially mitigating evidence, the court shall reopen the evidence and allow its presentation to the jury.
- d. Defense counsel shall be advised that objections to the state's sentencing phase closing argument will be waived if not raised as soon as grounds for such objection arise, unless explicit permission is granted to reserve objection until the conclusion of argument.
- e. The court shall give the defendant an opportunity to state any objections he or she may have to defense counsel or to the manner in which defense counsel have conducted or are conducting the defense.

3. *After Charge of the Court.* After charge of the court at the sentencing phase of the trial, the court shall confer with the prosecuting attorney and defense counsel. The defendant shall be present during the conference. The conference shall be recorded and transcribed.

The following matters shall be concluded during the conference after the charge of the court:

- a. The court shall review Part IV (D) and (E) of the Checklist with the prosecuting attorney and defense counsel. Any issue as to arguments of counsel or as to the charge of the court shall be presented and decided. Defense counsel shall be advised that any such issue not timely raised shall be waived. Reservations of objections to the sentencing phase charge will not be permitted.
- b. The court shall also review Part IV (F) of the Checklist with the prosecuting attorney and defense counsel. Defense counsel shall be advised that objections to the form of the verdict must be raised when the verdict is returned. The court shall note that a poll of the jurors is required.
- c. The court shall give the defendant an opportunity to state any objections he or she may have to defense counsel or to the manner in which defense counsel have conducted or are conducting the defense.

RULE IV. REVIEW PROCEEDINGS

A. In the Superior Court.

1. *Filing of a Complete Transcript.* Within 90 days from the jury's verdict in the sentencing phase of the proceedings, the court reporter shall file with the superior court a complete transcript of all phases of the case unless the reporter has obtained an extension of time. Requests for extensions of time for filing shall be directed to the Chief Justice of the Supreme Court; however, no extension of time for filing the transcript shall exceed 60 days. For purposes of this rule, the term "complete transcript" shall include a complete transcription of the following: all pre-trial hearings; the selection of the jurors, including challenges for cause; the voir dire examination and the striking; the opening statements and closing arguments of counsel; the examination of the witnesses; all documentary evidence, including photographs; a copy of all video and audio recordings in the pre-trial and trial records; all oral motions (whether pre-trial, during trial, or after trial) and all hearings on oral and written motions; all oral objections and all hearings on oral and written objections; all conferences and hearings of every description and for every purpose conducted between court and counsel, including all bench and chamber conferences; all oral stipulations of counsel; the charges of the court to the jury during the guilt-innocence and sentencing phases of the proceedings; the publication of the verdict and the polling of the jury; the pronouncement of sentence; and all oral comments, instructions, directions, admonitions, rulings, and orders of the court in the case from the first proceeding through conclusion of the trial.

a. The filing of a motion for new trial is not a procedural prerequisite for review by the superior court and the Supreme Court. A defendant may, but is not required, to file a motion for new trial. A defendant may elect to proceed either by motion for new trial or direct appeal, or may allow the case to be presented directly to the Supreme Court for review. The case nevertheless shall be considered by the Supreme Court.

b. These rules shall not be construed so as to limit or restrict the grounds of review available through motion for new trial, motion to withdraw a guilty plea, direct appeal, writ of habeas corpus, or any other writ, motion, or proceeding cognizable in the courts of this state. It is, however, the purpose of these rules to ensure that as many issues as possible that heretofore could be raised by writ of habeas corpus or other post-trial procedure are timely raised before or during trial.

c. The procedures governing the writ of habeas corpus may be employed by any defendant to assert rights and seek remedies if the procedures established by these rules are inadequate or ineffective in any constitutional sense.

d. It is not the intent of these rules to permit any issues to be raised or presented in the superior court or the Supreme Court that previously have been waived, procedurally defaulted, or abandoned pursuant to the laws of this state or of the United States.

2. *Motion for New Trial.* The sole function of a motion for new trial shall be to bring to the attention of the superior court after imposition of sentence such grounds as defense counsel may wish the trial court to decide.

- a. When the court reporter files the complete transcript, as described above, he or she shall notify the trial judge and counsel. The hearing on the motion for new trial shall be taken down and transcribed by the reporter.
- b. Additional evidence may be heard under the rules applicable to extraordinary motions for new trial or otherwise as necessary to perfect the record and to rule upon the motion for new trial.
- c. The hearing on the motion for new trial shall not be limited to the grounds asserted by the defendant.
- d. Every defendant shall have the right to be represented by appointed or retained counsel in all matters and at all times during the pendency of a motion for new trial.
- e. Within 20 days of the hearing by the trial court, the court reporter shall file with the trial court a complete transcript of the proceedings on the motion for new trial, unless the reporter has obtained an extension of time in writing from the judge who imposed the death sentence. No extension of time for filing the transcript shall exceed 15 days.

3. *Transmission to the Supreme Court.*

- a. It shall be the duty of the superior court to transmit the entire record, the Report of the Trial Judge required by OCGA § 17-10-35 (a) (attached as an appendix to these rules) and the complete transcript, as defined in Rule IV (A) above, to the Supreme Court for review regardless of whether a notice of appeal has been filed.
 - (1) If no review proceedings have been commenced in the superior court, the superior court shall transmit the case to the Supreme Court for review within 10 days of the filing by the court reporter of the complete transcript of trial.
 - (2) The superior court shall transmit the case to the Supreme Court for review within 30 days from entry of an order denying a motion for new trial.
- b. Except as provided in these rules, the appeal shall be presented, heard, and determined in accordance with the rules of the Supreme Court and the Appellate Practice Act.

B. In the Supreme Court. Review proceedings in the Supreme Court shall be conducted in accordance with the following rules:

1. At any time after the case is docketed in the Supreme Court, the superior court may be directed by the Supreme Court to conduct further hearings, to hold additional conferences for specified purposes, or to make additional findings of facts or conclusions of law in respect to issues raised by the parties on appeal or perceived by the Supreme Court although not asserted by the defendant or the state. Any such matter may be referred to the superior court for disposition according to a timetable established by order of the Supreme Court. The Supreme Court shall retain jurisdiction of the entire appeal, unless otherwise specified by order, notwithstanding the referral to the superior court, and may take such actions in respect thereto as are necessary or proper pending a decision by the superior court on the matter or matters referred.
2. In all cases, the Supreme Court shall determine whether the verdicts are supported by the evidence according to law. The Supreme Court shall review each of the assertions of error timely raised by the defendant during the proceedings in the trial court regardless of whether an assertion of error was presented to the trial court by motion for new trial and regardless of whether error is

enumerated in the Supreme Court. However, except in cases of plain error, assertions of error not raised on appeal shall be waived. The Supreme Court may direct defense counsel and the State to brief and argue any or all additional grounds.

CHECKLIST

The following is a checklist of frequently arising issues that trial courts and counsel should consider in death penalty trials. It would be impossible to produce an exhaustive list of the issues that might arise at trial, and this checklist, including the citations provided regarding matters specific to the sentencing phase, should *not* be treated as a substitute for independent research and professional judgment in individual cases.

PART I. PRE-TRIAL

A. Arrest

1. With warrant
2. Without warrant
 - a. In public place
 - b. In home
3. Investigative detentions
 - a. Reasonable and articulable suspicion
 - b. Limited in scope

B. Search and Seizure

1. With warrant
 - a. Sufficiency of description
 - b. Sufficiency of probable cause
 - c. Scope of permissible search
2. Without warrant
 - a. Expectation of privacy; standing
 - b. Search of person
 - (1) Incident to arrest
 - (2) Inventory search of personal effects prior to incarceration
 - (3) Limited search during investigative detention
 - (4) Consent search
 - c. Search of vehicle
 - (1) Protective search during lawful investigative stop
 - (2) The “plain view” doctrine
 - (3) Incident to arrest
 - (4) Inventory search of seized automobile
 - d. Search of premises
 - (1) Incident to arrest
 - (2) Probable cause and exigent circumstances
3. Of a probationer’s person or premises
4. Electronic surveillance
 - a. Federal statutes
 - b. Georgia statutes

5. Motion to suppress
 - a. Form of motion
 - b. Timing of motion

C. Identification of defendant

1. Of defendant
2. Of defendant's voice

D. Confessions and Admissions

1. Applicability of *Miranda*
2. Assertion of right to counsel
3. Invocation of right to remain silent
4. Confessions and admissions of co-conspirators
5. Confessions and admissions during psychiatric examination
6. Confessions obtained after illegal arrest
7. Voluntariness of confession

E. Bail

F. Representation by Counsel

1. Right to counsel
2. Right of self-representation
3. No absolute right of indigent to appointment of attorney of own choosing
4. Factors favoring continuation of existing representation
5. Effective assistance of counsel
 - a. General standard
 - b. Includes meaningful access to attorney
 - c. Conflicts of interest

G. Demurrers, Motions to Quash, and Special Pleas

1. Special versus general demurrers

H. Arraignment

1. Notice
2. Guilty plea
 - a. Competence and advisement of rights
 - b. Plea to lesser offense
 - c. Plea without admission of actual guilt
 - d. Jury trial as to sentence after guilty plea
 - e. Withdrawal of plea

I. Pleas in Bar

1. Double jeopardy
 - a. Denial of timely-filed plea of double jeopardy appealable prior to trial
 - b. Aggravating circumstances (see below)
2. Statute of limitations
3. Speedy trial
 - a. Statutory right
 - b. Constitutional right

J. Defendant's Mental Condition

1. Motion for mental examination
2. Defendant's competence to stand trial; jury trial on competence; trial court's duty to inquire if competence seems to be in question
3. Defendant's mental condition at the time of the offense
 - a. Not guilty by reason of insanity
 - b. Guilty but mentally ill; does not bar death sentence
 - c. Guilty but mentally retarded; bars death sentence
4. Ex parte hearings regarding funds

K. Discovery

1. Statutory rights of discovery
2. State's constitutional duty to disclose evidence favorable to defendant
3. State's failure to preserve evidence
4. In-camera inspection by trial court
5. Independent examination of evidence by a defense expert

L. Motion for Severance

1. Severance of co-defendant's case when death penalty sought
2. Severance of multiple offenses

M. Motion to Recuse

1. Judge
2. Prosecutor

N. Continuances

1. Absence of witness
2. Absence of attorney
3. Other reasons

O. Motions Regarding Publicity

1. Change of venue
2. "Gag orders"
3. Motion for closed hearing

P. Jury Composition Challenges

1. Statutory
2. Sixth Amendment
3. Equal Protection Clause of Fourteenth Amendment
4. Measuring under-representation
5. Cognizability of under-represented group
6. Time for interposing challenge

PART II. INTERIM REVIEW

A. Proceedings in the Trial Court

1. OCGA §§ 17-10-35.1, 17-10-35.2; UAP Rule II (F) and (G)

B. Proceedings in the Supreme Court

1. OCGA § 17-10-35.2; UAP Rule II (H)

PART III. TRIAL PROCEEDINGS: GUILT/INNOCENCE PHASE

A. Voir Dire

1. Individual voir dire
2. Request for sequestered voir dire
3. Scope of examination
4. Challenges for cause
 - a. Generally
 - b. Bias for or against the death penalty: Wainwright v. Witt, 469 U. S. 412 (105 SCt 844, 83 LE2d 841) (1985)
 - c. Disqualification of law enforcement officers upon defense motion
 - d. Pre-trial publicity
5. Peremptory challenges
6. Racial discrimination
7. Gender discrimination

B. Opening Statements

C. Sequestration of Witnesses

D. Hearings Outside the Presence of the Jury

1. Admissibility of defendant's statement
2. Motion to quash in-court identification

E. Issues that May Arise Regarding Admissibility of Evidence

1. Relevance
2. Videotapes
3. Audiotapes
4. Photographs
 - a. Authentication
 - b. Autopsy photographs
 - c. Trial court's discretion to exclude photos with insufficient probative value
5. Documents
 - a. Public
 - b. Private
 - c. Handwriting
6. Tangible objects
 - a. Chain of custody
7. Best evidence rule
8. Character evidence
 - a. General criminal law considerations
 - b. Rules of admissibility in the guilt/innocence phase versus the sentencing phase
 - c. Victim's character
9. Scientific evidence
10. Opinion evidence
 - a. Lay witnesses
 - b. Expert witnesses

11. Hearsay
 - a. Definition
 - b. Exceptions
12. Privileged communications

F. Examination of Witnesses

1. Competence of witnesses
 - a. Generally
 - b. Children
 - c. Interpreters
2. Direct examination
 - a. Leading questions
3. Cross-examination
 - a. Cross-examination of state witnesses regarding pending criminal charges
 - b. Right to thorough and sifting cross-examination
4. Re-direct/re-cross-examination

G. Motions for Mistrial and for Curative Instructions

1. Time for motion
2. Discretion of the trial court
3. Renewing motion for mistrial after curative instruction

H. Motion for Directed Verdict of Acquittal

I. Re-opening the Evidence

J. Closing Argument

1. Injection of matters not in evidence
2. Restriction of argument of defense counsel
3. Prosecutorial comment on pre-trial silence of accused
4. Prosecutorial comment on defendant's failure to testify
5. Prosecutorial comment on the failure of the defendant's spouse to testify
6. Expression of personal opinion as to defendant's guilt
7. Reading the law versus discussing law that will be charged
8. Improper to argue future dangerousness or victim impact
9. "Golden Rule" argument
10. Objections must be raised at trial

K. Charge of the Court

1. Requests to charge
2. Lesser included offenses
 - a. When evidence fails to warrant such a charge
 - b. Improper sequential charges
3. Presumptions
 - a. Except for sanity and innocence, charge should not be cast in terms of presumptions
 - b. Permissible inferences
4. Charges on confessions and admissions
5. Exceptions to charges should be raised before jury retires to deliberate

L. Conduct of the Judge

1. Expressions of opinion by trial court are forbidden
2. Control of counsel
 - a. Correction of misstatement of law by defense counsel
 - b. Rebuke of counsel for improper conduct
3. Physical control of defendant
4. Examination of the witnesses by the trial court
5. Coercion of jury forbidden
6. Judicial comment on the defendant's failure to testify forbidden
7. Contempt power of court

M. Conduct of Counsel

1. Ethical considerations
2. Attorney-client privilege

N. Conduct of Jurors

1. Jury's knowledge of co-defendant's guilty plea
2. Communications with non-jurors
3. Unauthorized dispersal of jurors
4. Jury sequestration
5. Jurors not permitted to directly question witness
6. Jury request to rehear evidence
7. Jury request to be recharged
8. Alternate jurors not to deliberate with jury

O. Conduct of Witness

1. Violation of the rule of sequestration
2. Corrective measures versus barring testimony

P. Conduct of the Defendant

1. Voluntary absence of the defendant
2. Disruptive defendant
3. Right to assist in the defense

Q. Verdict

1. Form
2. Poll of jurors

PART IV. TRIAL PROCEEDINGS: SENTENCING PHASE

A. Opening Statements

1. Opening statements required upon request: *O'Kelley v. State*, 284 Ga. 758, 765-769 (3) (670 SE2d 388) (2008)

B. Issues that May Arise Regarding the Admissibility of Evidence

1. General considerations applicable to evidence in mitigation and aggravation
 - a. Jury may consider all facts and circumstances of the case: *Spivey v. State*, 241 Ga. 477, 481 (2) (246 SE2d 288) (1978); OCGA § 17-10-2
 - b. Evidence may not be excluded because it could have been presented in guilt/innocence phase but was not: *Brown v. State*, 235 Ga. 644, 647-650 (3) (220 SE2d 922) (1975)

c. Evidence may not be excluded as only relevant to guilt or innocence: *Blankenship v. State*, 251 Ga. 621, 624 (308 SE2d 369) (1983)

2. Admissibility of mitigation evidence

a. Scope: *Barnes v. State*, 269 Ga. 345, 357-361 (27) (496 SE2d 674) (1998)

b. Rules of evidence are relaxed but not suspended in the sentencing phase: *Gissendaner v. State*, 272 Ga. 704, 714 (12) (532 SE2d 677) (2000)

c. Testimony of friends or relatives asking for mercy admissible: *Barnes v. State*, 269 Ga. 345, 359 (27) (496 SE2d 674) (1998)

d. Mental health testimony admissible

e. Examples of *improper* testimony or other evidence

(1) Death penalty is not a deterrent: *Stevens v. State*, 247 Ga. 698, 709 (24) (278 SE2d 398) (1981)

(2) Religious/philosophical approaches to death penalty: *Franklin v. State*, 245 Ga. 141, 151-152 (7) (263 SE2d 666) (1980)

(3) Mechanics of execution: *Franklin v. State*, 245 Ga. 141, 151-152 (7) (263 SE2d 666) (1980)

(4) Sentences imposed by juries in similar cases: *Wilson v. State*, 250 Ga. 630, 638-639 (12) (300 SE2d 640) (1983)

(5) Defendant's offer to plead guilty: *Mobley v. State*, 265 Ga. 292, 298-300 (18) (455 SE2d 61) (1995)

3. Admissibility of aggravating evidence: OCGA § 17-10-2

a. Evidence of non-statutory aggravating circumstances admissible: *Hicks v. State*, 256 Ga. 715, 727 (19) (a) (352 SE2d 762) (1987)

b. Prior guilty verdicts and independent proof of prior crimes admissible: *Mize v. State*, 269 Ga. 646, 657-658 (15) (501 SE2d 219) (1998); *Hammond v. State*, 260 Ga. 591, 597 (6) n. 4 (398 SE2d 168) (1990)

c. Proof of conviction resulting from plea: *Mize v. State*, 269 Ga. 646, 657 (15) (501 SE2d 219) (1998)

d. Victim impact evidence about the victim's life and the impact of the victim's loss admissible: OCGA § 17-10-1.2; *Turner v. State*, 268 Ga. 213, 214-215 (2) (a) (486 SE2d 839) (1997)

e. Testimony concerning a witness's opinions about the crime, the defendant, and the appropriate sentence impermissible: *Bryant v. State*, 288 Ga. 876, 895-898 (15) (a) (708 SE2d 362) (2011)

C. Issues Concerning Specific Statutory Aggravating Circumstances: OCGA § 17-10-30 (b)

1. Aggravating Circumstance (b) (1)

a. Establishing validity of prior convictions: *Pope v. State*, 256 Ga. 195, 209-210 (17) (345 SE2d 831) (1986), overruled on other grounds by *Nash v. State*, 271 Ga. 281, 281 (519 SE2d 893) (1999)

b. (b) (1) status determined at time of sentencing rather than time of offense: *Stephens v. Hopper*, 241 Ga. 596, 602-603 (4) (247 SE2d 92) (1978)

c. May be established by proof of out-of-state convictions that clearly are comparable to Georgia capital felony offenses: *Moon v. State*, 258 Ga. 748, 752 (3) (375 SE2d 442) (1988)

- d. Age of a conviction is no ground for exclusion: *Cook v. State*, 255 Ga. 565, 576 (13) (b) (340 SE2d 843) (1986)
- 2. Aggravating Circumstance (b) (2)
 - a. “Capital felony” defined: *Waters v. State*, 248 Ga. 355, 368-369 (13) (283 SE2d 238) (1981)
 - b. Aggravated battery must be separate from act causing instantaneous death: *Davis v. State*, 255 Ga. 588, 593-594 (3) (c) (340 SE2d 862) (1986)
 - c. The supporting capital felony must be defined: *Rivers v. State*, 250 Ga. 303, 310 (8) (a) (298 SE2d 1) (1982)
 - d. No requirement that the defendant be charged with or convicted of the supporting capital felony or that the supporting capital felony be completed: *Brockman v. State*, 292 Ga. 707, 710-712 (2) (739 SE2d 332) (2013)
 - e. Continuous course of conduct may establish “in commission of” element of (b) (2) aggravating circumstance: *Romine v. State*, 251 Ga. 208, 214 (8) (305 SE2d 93) (1983)
 - f. Mutually supporting aggravating circumstances may be presented to and found by the jury, regardless of their treatment on appeal: *Heidler v. State*, 273 Ga. 54, 65-66 (22) (537 SE2d 44) (2000)
- 3. Aggravating Circumstance (b) (3)
 - a. Defined: *Pope v. State*, 256 Ga. 195, 210-211 (18) (345 SE2d 831) (1986)
- 4. Aggravating Circumstance (b) (4)
 - a. Distinction between (b) (4) and (b) (2) aggravating circumstances: *Simpkins v. State*, 268 Ga. 219, 220-223 (2) (486 SE2d 833) (1997)
- 5. Aggravating Circumstance (b) (5)
- 6. Aggravating Circumstance (b) (6)
 - a. Applies where defendant directs a follower who acts without any payment: *Mize v. State*, 269 Ga. 646, 656-657 (14) (501 SE2d 219) (1998)
 - b. Does not apply where defendant acted at another’s behest but was “not hired” by the defendant: *Whittington v. State*, 252 Ga. 168, 178 (9) (a) (313 SE2d 73) (1984)
- 7. Aggravating Circumstance (b) (7)
 - a. Scope: *McMichen v. State*, 265 Ga. 598, 601-603 (2) (458 SE2d 833) (1995); *Whittington v. State*, 252 Ga. 168, 178-179 (9) (b) (313 SE2d 73) (1984); *Hance v. State*, 245 Ga. 856, 860-863 (3) (268 SE2d 339) (1980)
 - b. Suggested charge: *West v. State*, 252 Ga. 156, 161-162 (313 SE2d 67) (1984)
- 8. Aggravating Circumstance (b) (8)
 - a. Scope: *Fair v. State*, 288 Ga. 244, 245-250 (1) (702 SE2d 420) (2010); *Fair v. State*, 284 Ga. 165, 167-170 (2) (b) (664 SE2d 227) (2008)
- 9. Aggravating Circumstance (b) (9)
 - a. Evidence to prove lawful custody or confinement: *Franklin v. State*, 245 Ga. 141, 150 (6) (263 SE2d 666) (1980)
- 10. Aggravating Circumstance (b) (10)
 - a. Scope: *Humphreys v. State*, 287 Ga. 63, 83-84 (10) (694 SE2d 316) (2010)
- 11. Aggravating Circumstance (b) (11)

D. Issues that May Arise in Connection with Closing Argument

1. Scope of closing argument generally: *Conner v. State*, 251 Ga. 113, 117-123 (5), (6) (303 SE2d 266) (1983)

2. Prosecutorial reference to appellate review forbidden: *Caldwell v. Mississippi*, 472 U. S. 320 (105 SCt 2633, 86 LE2d 231) (1985); *Smith v. State*, 270 Ga. 240, 246-248 (11) (510 SE2d 1) (1998), overruled on other grounds by *O'Kelley v. State*, 284 Ga. 758, 768 (3) (670 SE2d 388) (2008)

3. Impermissible reading of the law versus proper references to the law: *Wilson v. State*, 271 Ga. 811, 820 (16) (c) (525 SE2d 339) (1999), overruled on other grounds by *O'Kelley v. State*, 284 Ga. 758, 768 (3) (670 SE2d 388) (2008)

4. Arguments regarding deterrence and lack of remorse: *McClain v. State*, 267 Ga. 378, 385 (4) (a) (477 SE2d 814) (1996); *Sears v. State*, 262 Ga. 805, 808 (7) (426 SE2d 553) (1993), disapproved on other grounds by *Brogdon v. State*, 287 Ga. 528, 531 (2) (697 SE2d 211) (2010)

5. Arguments regarding future dangerousness permissible only if supported by proper evidence: *Henry v. State*, 278 Ga. 617, 618-620 (1) (604 SE2d 826) (2004)

6. Arguments setting forth statutory definition of parole permissible: OCGA § 17-10-31 (b); *Jenkins v. State*, 265 Ga. 539, 540 (1) (458 SE2d 477) (1995)

7. Impropriety of extreme language disparaging the defendant: *Edenfield v. State*, 293 Ga. 370, 391-392 (11) (744 SE2d 738) (2013)

E. Issues that May Arise in Connection with the Court's Charge

1. Charge on mitigating circumstances

a. Generally: *Romine v. State*, 251 Ga. 208, 214-216 (10) (305 SE2d 93) (1983)

b. Jury should be instructed that it is authorized to consider mitigating evidence, but the trial court is not required to identify specific mitigating circumstances: *Davis v. State*, 255 Ga. 598, 612 (22) (340 SE2d 869) (1986)

c. Jury should be informed that it may recommend a life sentence even if it finds one or more statutory aggravating circumstances: *Spivey v. State*, 241 Ga. 477, 481 (2) (246 SE2d 288) (1978); *Fleming v. State*, 240 Ga. 142, 146-147 (7) (240 SE2d 37) (1977)

d. Jury must not be charged that it should disregard "sympathy": *Legare v. State*, 250 Ga. 875, 877-878 (2) (302 SE2d 351) (1983), overruled on other grounds by *Humphreys v. State*, 287 Ga. 63, 82 (9) (b) (694 SE2d 316) (2010)

2. Jury can consider all the evidence presented in both phases of the trial: *Ross v. State*, 254 Ga. 22, 31 (5) (d) (326 SE2d 194) (1985), overruled on other grounds by *O'Kelley v. State*, 278 Ga. 564, 567 (2) (604 SE2d 509) (2004)

3. Necessity to define legal words of art: *Rivers v. State*, 250 Ga. 303, 310 (8) (a), (b) (298 SE2d 1) (1982)

4. Any *Allen* charge should be modified to fit sentencing phase: *Humphreys v. State*, 287 Ga. 63, 80-82 (9) (b) (694 SE2d 316) (2010)

5. Statutory instructions to be provided to jury in writing: OCGA § 17-10-30 (c)

F. Issues that May Arise in Connection with the Verdict

1. Form: OCGA § 17-10-30 (c); *Potts v. State*, 259 Ga. 96, 104 (22) (376 SE2d 851) (1989); *Romine v. State*, 251 Ga. 208, 212-213 (7) (305 SE2d 93) (1983)

2. Substance:

a. Aggravating Circumstance (b) (2)

(1) “Kidnapping with bodily injury,” rather than simple “kidnapping,” required to serve as a statutory aggravating circumstance: *Crawford v. State*, 254 Ga. 435, 440-441 (5) (330 SE2d 567) (1985)

b. Aggravating Circumstance (b) (7)

(1) Requires both a finding that the murder was “outrageously or wantonly vile, horrible or inhuman” and a finding of at least one of the subparts of the second portion of the statutory circumstance: *Jarrell v. State*, 261 Ga. 880, 882-883 (2) (413 SE2d 710) (1992); *Hall v. State*, 261 Ga. 778, 783 (11) (415 SE2d 158) (1991)

(2) A finding of multiple subparts of the second portion of the statutory circumstance must indicate unanimity regarding each subpart and, therefore, must not be in the disjunctive: *Rivera v. State*, 282 Ga. 355, 366 (14) (647 SE2d 70) (2007)

c. Submission of mutually supporting aggravating circumstances permitted, regardless of their treatment on appeal: *Jenkins v. State*, 269 Ga. 282, 294 (23) (b) (498 SE2d 502) (1998)

3. Poll of jurors required: UAP Rule III (B) (3) (b)

PART V. MOTION FOR NEW TRIAL

A. Supplementation of the Record

1. OCGA § 5-6-41 (f)

B. Presentation of New Evidence

1. UAP Rule IV (A) (2) (b); *Mincey v. State*, 251 Ga. 255, 272-274 (18) (304 SE2d 882) (1983)

2. Ineffective assistance claims must be raised if original trial counsel are no longer representing the defendant: *Hall v. Lewis*, 286 Ga. 767, 769 (II) (A) (692 SE2d 580) (2010)

PART VI. REVIEW IN THE SUPREME COURT

A. Superior Court can be Directed to Conduct Further Hearings

1. UAP Rule IV (B) (1); *Hammond v. State*, 260 Ga. 591, 599-600 (10) (398 SE2d 168) (1990)

B. “Plain Error” Review in Death Penalty Cases

1. UAP Rule IV (B) (2); *Lynd v. State*, 262 Ga. 58, 60-61 (8) (414 SE2d 5) (1992); OCGA § 24-1-103

C. Mandatory Review of All Death Sentences

1. OCGA § 17-10-35

PART VII. RETRIAL AS TO SENTENCE

A. When Permitted

1. Permitted: *Griffin v. State*, 266 Ga. 115, 119-121 (3) (464 SE2d 371) (1995), disapproved on other grounds by *Washington v. State*, 276 Ga. 655, 658 (2) (581 SE2d 518) (2003); *Brooks v. State*, 259 Ga. 562, 562-563 (1) (385 SE2d 81) (1989)

2. Not Permitted: *Bullington v. Missouri*, 451 U. S. 430 (101 SCt 1852, 68 LE2d 270) (1981); *Hill v. State*, 250 Ga. 821 (301 SE2d 269) (1983)

B. Evidence

1. State not limited to statutory aggravating circumstances found at first trial: *Poland v. Arizona*, 476 U. S. 147 (106 SCt 1749, 90 LE2d 123) (1986); *Spraggins v. State*, 255 Ga. 195 (336 SE2d 227) (1985)

2. Defendant may introduce exculpatory evidence even though he stands convicted: *Blankenship v. State*, 251 Ga. 621 (308 SE2d 369) (1983)

APPENDIX

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/YYYY

3. Sex: M
F 4. Race: African-American
White
Other _____

5. Marital status: Never married Married
Separated Divorced
Spouse deceased

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

7. Father living: Yes No , died _____
Mother living: Yes No , died _____

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/innocence 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	[]	[]
(2) The offense of murder was committed while the offender was engaged in the commission of burglary in any degree 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/herself 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 was committed during or because of the exercise of his or her official duties.	[]	[]
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 firefighter while engaged in the performance of his or her 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/herself or another.

k. 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.

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:
Retained by defendant []
Appointed by court []

3. If counsel was appointed by court, was it because:
 Defendant was unable to afford counsel?
 Defendant refused to secure counsel?
 Other (explain): _____
4. How many years has counsel practiced law?
 0 to 5 5 to 10 over 10
5. What is the nature of counsel's practice?
 Mostly civil General 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. If 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, required by former Rule II (C) (6) of the Unified Appeal Procedure, have been superseded by the Jury Composition Rule.]

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 ¹	_____	_____
8. Date sentence review completed ¹	_____	_____
9. Total elapsed days ¹		_____

(¹To be completed by the 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