

# The Burger Court Opinion Writing Database

## *Godfrey v. Georgia*

446 U.S. 420 (1980)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Do: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

GODFREY v. GEORGIA, NO. 78-6899

From: The Chief Justice

Circulated: MAY 6 1980

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Mr. Chief Justice Burger, dissenting

After murdering his wife and mother-in-law, petitioner informed the police that he had committed a "hideous" crime. The dictionary defines hideous as "morally offensive," "shocking," or "horrible." Thus, the very curious feature of this case is that petitioner himself characterized his crime in terms equivalent to those employed in the Georgia statute. For my part, I prefer petitioner's characterization of his conduct to the plurality's effort to excuse and rationalize that conduct as just another killing. Ante at 12. The jurors, in this case, who heard all relevant mitigating evidence, see Lockett v. Ohio, 438 U.S. 586 (1978), obviously shared that preference; they concluded that this "hideous" crime was "outrageously or wantonly, vile, horrible and inhuman" within the meaning of § (b)(7).

More troubling than the plurality's characterization of petitioner's crime is the new responsibility that it assumes with today's decision -- the task of determining on a case-by-

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

Circulated: MAY 15 1980

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## SUPREME COURT OF THE UNITED STATES

No. 78-6899

Robert Franklin Godfrey, Petitioner, v. State of Georgia.	}	On Writ of Certiorari to the Supreme Court of Georgia.
--	---	--

[May —, 1980]

MR. CHIEF JUSTICE BURGER, dissenting.

After murdering his wife and mother-in-law, petitioner informed the police that he had committed a "hideous" crime. The dictionary defines hideous as "morally offensive," "shocking," or "horrible." Thus, the very curious feature of this case is that petitioner himself characterized his crime in terms equivalent to those employed in the Georgia statute. For my part, I prefer petitioner's characterization of his conduct to the plurality's effort to excuse and rationalize that conduct as just another killing. *Ante*, at 12. The jurors, in this case, who heard all relevant mitigating evidence, see *Lockett v. Ohio*, 438 U. S. 586 (1978), obviously shared that preference; they concluded that this "hideous" crime was "outrageously or wantonly, vile, horrible and inhuman" within the meaning of § (b)(7).

More troubling than the plurality's characterization of petitioner's crime is the new responsibility that it assumes with today's decision—the task of determining on a case-by-case basis whether a defendant's conduct is egregious enough to warrant a death sentence. In this new role, the plurality appears to require "evidence of serious physical abuse" before a death sentence can be imposed under § (b)(7). *Ante*, at 10. For me, this new requirement is arbitrary and unfounded and trivializes the Constitution. Consider, for example, the Georgia case of *Harris v. State*, 237 Ga. 718 (1976), where the

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 2, 1979

RE: No. 78-6899 Godfrey v. Georgia

Dear Lewis:

Your proposed question is satisfactory to me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written in dark ink.

Mr. Justice Powell

cc: The Conference

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Black  
Mr. Justice Brennan  
Mr. Justice Marshall  
Mr. Justice Burger  
Mr. Justice Rehnquist

From: Mr. Justice Brennan

1st DRAFT

Circulated: APR 15 1980

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# SUPREME COURT OF THE UNITED STATES

No. 78-6899

Robert Franklin Godfrey,  
Petitioner,  
v.  
State of Georgia.

On Writ of Certiorari to the Supreme Court of Georgia.

[April —, 1980]

MR. JUSTICE BRENNAN, concurring in the judgment.

I concur in the reversal of petitioner's death sentences. I continue to adhere to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. *Gregg v. Georgia*, 428 U. S. 153, 227 (1976) (BRENNAN, J., dissenting).

✓

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

October 1, 1979

Re: No. 78-6899, Godfrey v. Georgia

Dear Lewis,

Your draft of the limited question in  
this case is fine with me.

Sincerely yours,

Mr. Justice Powell

P.S.

Copy to Mr. Justice Stevens

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

October 2, 1979

Re: No. 78-6899, Godfrey v. Georgia

Dear Lewis,

Your formulation of the question in this case is entirely satisfactory to me. I would grant certiorari limited to this question.

Sincerely yours,

P.S.  
/

Mr. Justice Powell

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Stevens  
Mr. Justice O'Connor  
Mr. Justice Souter  
Mr. Justice Ginsburg  
Mr. Justice Breyer

From: Mr. Justice Stewart

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-6899

Robert Franklin Godfrey,  
Petitioner,  
v.  
State of Georgia.

On Writ of Certiorari to the Supreme Court of Georgia.

[April —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

Under Georgia law, a person convicted of murder<sup>1</sup> may be sentenced to death if it is found beyond a reasonable doubt that the offense "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." Georgia Code Ann. § 27-2534.1 (b)(7). In *Gregg v. Georgia*, 428 U. S. 153, the Court held that this statutory aggravating circumstance (§ (b)(7)) is not unconstitutional on its face. Responding to the argument that the language of the provision is "so broad that capital punishment could be imposed in any murder case," the prevailing opinion said:

"It is, of course, arguable that any murder involves

<sup>1</sup> Georgia Code Ann. § 26-1101 defines "murder" as follows:

"(a) A person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears, and where all the circumstances of the killing show an abandoned and malignant heart.

"(b) A person also commits the crime of murder when in the commission of a felony he causes the death of another human being, irrespective of malice."



1, 7, 11, 12

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated: 15 MAY 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-6899

Robert Franklin Godfrey,  
Petitioner,  
v.  
State of Georgia.

On Writ of Certiorari to the Su-  
preme Court of Georgia.

[April —, 1980]

MR. JUSTICE STEWART announced the judgment of the Court and delivered an opinion in which MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS join.

Under Georgia law, a person convicted of murder<sup>1</sup> may be sentenced to death if it is found beyond a reasonable doubt that the offense "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." Georgia Code Ann. § 27-2534.1 (b)(7). In *Gregg v. Georgia*, 428 U. S. 153, the Court held that this statutory aggravating circumstance (§ (b)(7)) is not unconstitutional on its face. Responding to the argument that the language of the provision is "so broad that capital punishment could be imposed in any murder case," the prevailing opinion said:

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"(b) A person also commits the crime of murder when in the commission of a felony he causes the death of another human being, irrespective of malice."

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 20, 1980

MEMORANDUM TO THE CONFERENCE

Holds for No. 78-6899, GODFREY V. GEORGIA,

Seven cases have been held for Godfrey, as follows:

(1) No. 79-5032 - Spraggins v. Georgia

In this case the defendant was sentenced to death on the basis of the §(b)(7) aggravating circumstance alone (the offense "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim"). On appeal, the Georgia Supreme Court affirmed the death sentence, expressly finding that the evidence supported the trial court's finding of the §(b)(7) aggravating circumstance.

I believe that the issue decided in Godfrey, expressly advanced in the certiorari petition, is properly before this Court in the instant case, notwithstanding that the issue may not have been discretely put in issue below. Under state law, the Georgia Supreme Court may not affirm a judgment of death until it has independently assessed the evidence of record and determined that such evidence supports the trial judge's or jury's finding of an aggravating circumstance. The State Supreme Court apparently understands this obligation as carrying with it the responsibility to keep §(b)(7) within constitutional bounds. See Harris v. State, 237 Ga. 718, 732, 230 S.E.2d 1, 10 (1976). Accordingly, in affirming the sentences in the instant case, the Georgia Supreme Court necessarily concluded that §(b)(7) could constitutionally apply to the facts presented.

My recommendation in this case is to grant the petition for certiorari, vacate the judgment of the Georgia Supreme Court insofar as it leaves standing the petitioner's death sentence, and remand the case to that court for further proceedings in the light of Godfrey. The determination of whether the evidence supports a

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 27, 1980

MEMORANDUM TO THE CONFERENCE

Re: Case held for 78-6899, Godfrey v. Georgia  
79-5921, Blake v. Georgia

This case was discussed in my memorandum of May 20, 1980 recommending the disposition of the cases which had been held for Godfrey. I refer you to that memorandum for a description of the case and its present posture.

The record has now been received. After examining it, I am satisfied that the petitioner failed even arguably to challenge the constitutionality of the §(b)(7) aggravating circumstance in his extraordinary motion for a new trial and in the appeal he pursued in connection therewith in the Georgia Supreme Court. Accordingly, I would deny the petition for certiorari.

P.S.  
/

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 13, 1980

Re: No. 78-6899 - Godfrey v. Georgia

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Dear Chief,

In tardy response to your letter of  
March 3, I should be glad to do the dis-  
sent in the above case.

Sincerely yours,



Mr. Justice White

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 4, 1980

Re: No. 78-6899 - Godfrey v. Georgia

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Dear Potter,

I shall shortly circulate a dissent  
in this case.

Sincerely yours,

*Byron*

Mr. Justice Stewart

Copies to the Conference

cmc

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 22 APR 1980

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-6899

Robert Franklin Godfrey, Petitioner, v. State of Georgia.	}	On Writ of Certiorari to the Supreme Court of Georgia.
--	---	--

[April —, 1980]

MR. JUSTICE WHITE, dissenting.

The sole question presented by this petition is whether, in affirming petitioner's death sentence, the Georgia Supreme Court adopted such a broad construction of Ga. Code Ann. § 27-2534.1 (b)(7) as to violate the Eighth and Fourteenth Amendments to the United States Constitution.

### I

In early September of 1977, Mrs. Godfrey, petitioner's wife, left him, moved in with her mother, and refused his entreaty to move back home. She also filed for divorce and charged petitioner with aggravated assault based on an incident in which he had cut some clothes off her body with a knife. On September 20, 1977, Mrs. Godfrey refused petitioner's request to halt divorce proceedings so that they could attempt a reconciliation. That same day petitioner carried his single-action shotgun to his mother-in-law's trailer home, where his wife, her mother, and the couple's 11-year-old daughter were playing a game around a table. Firing through a window, petitioner killed his wife with a shotgun blast to the head. As his daughter, running for help, attempted to rush past him, he struck her on the head with the barrel of the gun; she nonetheless was able to run on for help. Petitioner then reloaded his shotgun and, after entering the home, fired a fatal blast at his mother-in-law's head. After called the

ing

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: \

From: Mr. Justice White

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Recirculated: 9 MAY 1980

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-6899

Robert Franklin Godfrey,  
Petitioner,  
v.  
State of Georgia.

On Writ of Certiorari to the Supreme Court of Georgia.

[April —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

The sole question presented by this petition is whether, in affirming petitioner's death sentence, the Georgia Supreme Court adopted such a broad construction of Ga. Code Ann. § 27-2534.1 (b)(7) as to violate the Eighth and Fourteenth Amendments to the United States Constitution.

**I**

In early September of 1977, Mrs. Godfrey, petitioner's wife, left him, moved in with her mother, and refused his entreaty to move back home. She also filed for divorce and charged petitioner with aggravated assault based on an incident in which he had cut some clothes off her body with a knife. On September 20, 1977, Mrs. Godfrey refused petitioner's request to halt divorce proceedings so that they could attempt a reconciliation. That same day petitioner carried his single-action shotgun to his mother-in-law's trailer home, where his wife, her mother, and the couple's 11-year-old daughter were playing a game around a table. Firing through a window, petitioner killed his wife with a shotgun blast to the head. As his daughter, running for help, attempted to rush past him, he struck her on the head with the barrel of the gun; she nonetheless was able to run on for help. Petitioner then reloaded his shotgun and, after entering the home, fired a fatal blast at his mother-in-law's head. After calling the

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-6899

Robert Franklin Godfrey,	}	On Writ of Certiorari to the Supreme Court of Georgia.
Petitioner,		
v.		
State of Georgia.		

[May —, 1980]

MR. JUSTICE MARSHALL, concurring in the judgment.

I continue to believe that the death penalty is in all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments. In addition, I agree with the plurality that the Georgia Supreme Court's construction of the provision at issue in this case is unconstitutionally vague under *Gregg v. Georgia*, 428 U. S. 153 (1976). I write separately, first, to examine the Georgia Supreme Court's application of this provision, and second, to suggest why the enterprise on which the Court embarked in *Gregg v. Georgia*, *supra*, increasingly appears to be doomed to failure.

I

Under Georgia law, the death penalty may be imposed only when the jury both finds at least one statutory aggravating circumstance and recommends that the sentence of death should be imposed. Ga. Code Ann. § 26-31022. Under Ga. Code Ann. § 27-2534.1 (b)(7), it is a statutory aggravating circumstance to commit a murder that "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." In *Gregg v. Georgia*, *supra*, the Court rejected a facial challenge to the constitutionality of this aggravating circumstance. The prevailing opinion conceded that it is "arguable that any murder involves depravity of mind or an aggravated battery." 428 U. S., at 201 (opinion of STEWART, POWELL,



STYLISTIC CHANGES THROUGHOUT.

see also 1,6,7

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Marshall

16 MAY 1980

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2nd DRAFT

Recirculated: 16 MAY 1981

## SUPREME COURT OF THE UNITED STATES

No. 78-6899

Robert Franklin Godfrey,  
Petitioner,  
v.  
State of Georgia.

} On Writ of Certiorari to the Supreme Court of Georgia,

[May —, 1980]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring in the judgment.

I continue to believe that the death penalty is in all circumstances cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments. In addition, I agree with the plurality that the Georgia Supreme Court's construction of the provision at issue in this case is unconstitutionally vague under *Gregg v. Georgia*, 428 U. S. 153 (1976). I write separately, first, to examine the Georgia Supreme Court's application of this provision, and second, to suggest why the enterprise on which the Court embarked in *Gregg v. Georgia*; *supra*, increasingly appears to be doomed to failure.

### I.

Under Georgia law, the death penalty may be imposed only when the jury both finds at least one statutory aggravating circumstance and recommends that the sentence of death should be imposed. Ga. Code Ann. § 26-3102. Under Ga. Code Ann. § 27-2534.1 (b)(7), it is a statutory aggravating circumstance to commit a murder that "was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." In *Gregg v. Georgia*, *supra*, the Court rejected a facial challenge to the constitutionality of this aggravating circumstance. The prevailing opinion conceded that it is "arguable that any murder involves depravity of mind or an aggravated battery." 428 U. S., at 201 (opinion of STEWART, POWELL,

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 23, 1980 .

Re: No. 78-6899 - Godfrey v. Georgia

Dear Potter:

Please join me.

Sincerely,

H.A.

Mr. Justice Stewart

cc: The Conference

October 1, 1979

78-6899 Godfrey v. Georgia

Dear Potter and John:

I enclose a draft of a limiting question in the above case.

Before I circulate it, I would welcome your comments.

Sincerely,

Mr. Justice Stewart  
Mr. Justice Stevens

lfp/ss  
Enc.

October 2, 1979

*Attachment  
to memo of 10/11*

No. 78-6899 Godfrey v. Georgia

MEMORANDUM TO THE CONFERENCE

I propose that the grant of certiorari be limited to the following question:

"In affirming the imposition of the death sentence in this case, has the Georgia Supreme Court adopted such a broad and vague construction of Georgia Code Ann. §27-2534.1(b)(7) (specifying certain aggravating circumstances) as to violate the Eighth and Fourteenth Amendments to the United States Constitution?"

L.F.P., Jr.

SS

October 2, 1979

No. 78-6899 Godfrey v. Georgia

MEMORANDUM TO THE CONFERENCE

I propose that the grant of certiorari be limited to the following question:

"In affirming the imposition of the death sentence in this case, has the Georgia Supreme Court adopted such a broad and vague construction of Georgia Code Ann. §27-2534.1(b)(7) (specifying certain aggravating circumstances) as to violate the Eighth and Fourteenth Amendments to the United States Constitution?"

L.F.P., Jr.

SS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 3, 1980

78-6899 Godfrey v. Georgia

Dear Potter:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

*Lefferson  
may Q  
& Grant*

October 2, 1979

Re: No. 78-6899 - Godfrey v. Georgia

Dear Lewis:

Since I have continued to vote to deny certiorari in this case, I will of course leave it up to those who would grant the writ to formulate the question.

Sincerely,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 23, 1980

Re: No. 78-6899 - Godfrey v. Georgia

Dear Byron:

Please join me in your dissent.

Sincerely,



Mr. Justice White

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 1, 1979

Re: 78-6899 - Godfrey v. Georgia

Dear Lewis:

Your draft of the question is fine with me.

Respectfully,



Mr. Justice Powell

Copy to Mr. Justice Stewart

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 2, 1979

Re: 78-6899 - Godfrey v. Georgia

Dear Lewis:

Your proposed question is fine with me.

Respectfully,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 4, 1980

Re: 78-6899 Godfrey v. Georgia

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference