IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
No. 2024-TS-01178-SCT

CARLY MADISON GREGG
A/K/A CARLEY MADISON GREGG **APPELLANT**

V.

STATE OF MISSISSIPPI **APPELLEE**

BRIEF OF APPELLANT

On appeal from the Circuit Court of Rankin County, Mississippi
Trial Court # 61 CI1:24-cr-34169-JA

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ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. Carly Madison Gregg a/k/a Carley Madison Gregg, Appellant

2. Hon. Kathryn White Newman, Assistant District Attorney

3. Hon. Michael S. Smith, II, Assistant District Attorney

4. Hon. John K. Bramlett, Jr., District Attorney

5. Hon. Dewey K. Arthur, Circuit Court Judge

6. James H. Murphy/Murphy Law Firm, Appellant's Counsel

7. Hon. Lance Mixon, Appellant Counsel

8. Hon. Bradley Clanton, Appellant Counsel

9. Hon. Bridget Todd, Lead Trial Counsel

10. Hon. Kevin Camp, Trial Counsel

11. Mr. Heath Smylie, Appellant's step-father who was a victim of the March 19, 2024 incident, and is one of Carly's strongest supporters

12. Hon. Kim Phillips, counsel for Heath Smylie

13. Mr. Robert Breland, Carly's grandfather (father of Ashley Smylie) and one of Carly's strongest supporters

14. Mrs. Vicki Breland, Carly's grandmother (mother of Ashley Smylie) and one of Carly's strongest supporters

This, the 8th day of September, 2025.

/s/ James H. Murphy
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MURPHY LAW FIRM, PLLC
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This case is properly assigned to the Supreme Court of Mississippi

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Rankin County, Mississippi, and a judgment of conviction entered against Carly Madison Gregg as to Count I, First-Degree Murder and Sentence of life imprisonment, as to Count II, Attempted First-Degree murder and Sentence of life imprisonment, and Count III, Tampering with Evidence, and sentence of ten (10) years in the custody of the Mississippi Department of Corrections, said sentences to run consecutively. (C.P. 1100-1102; 1126-1129).

On or about May 22, 2024, Carly Madison Gregg ("Appellant," Carly," or "Gregg") was indicted on one count of First Degree Murder, one Count of Attempted Murder and one count of Tampering with Physical Evidence, for crimes that were alleged to have been committed on March 19, 2024. (C.P. 49). Carly's trial was conducted from September 16 through September 20, 2024. The jury returned guilty verdicts on all three counts, fixing punishment at life imprisonment on Counts I and II, while the Court imposed sentence on Count III. Aggrieved by the judgment of conviction and sentences imposed, Carly now appeals to this Honorable Court.

STATEMENT OF FACTS

On March 19, 2024, deputies responded to a report of a shooting at 214 Ashton Way in Brandon. (Tr. 466.) Deputy Hunter Lewis testified that he was the first officer to arrive. Id. After knocking several times and announcing himself, Mr. Heath Smylie opened the door and, according to Deputy Lewis, stated that his wife was inside and unresponsive. Deputy Lewis briefly entered, observed Carly's mother, Ms. Ashley Smylie, on the bedroom floor, and testified

that he did not detect a pulse. Returning outside, and before investigators arrived, Deputy Lewis testified that Mr. Smylie reported that his stepdaughter, Carly Gregg, had shot him and offered a general description of her clothing. (Tr. 470–71.) He further testified that Mr. Smylie indicated a .357 revolver was on the counter with one live round in the cylinder. (Tr. 471.) Deputy Lewis relayed this information to responding units, secured the scene until investigators and the coroner arrived, and remained on site. Id.

Although Carly was not at the residence when law enforcement arrived, she did turn herself in without incident a short time thereafter. In this regard, Deputy Tony Shack testified that he went out to assist/look for Carly after hearing the call over dispatch (Tr. 899). As he was patrolling the neighborhood near the residence, he "looked to [his] right [and] saw her standing there . . . ." (Tr. 900). He then "hopped out [and] said, 'Are you involved in this incident that happened in this neighborhood?'" According to Shack, Carly replied, "Yes, sir." (Tr. 900). He then took her into custody without incident and transported her to the scene. Id.

Other witnesses at the trial of this case included B.G., who testified that he was "best friends" with Carly. (Tr. 488). B.G. described Carly's home life as loving; he never saw negative interactions and said Ms. Smylie was patient, and that Carly and Heath Smylie (Carly's step dad) got along "like best friends." (Tr. 488.) He characterized Carly as a high-achieving "genius" who rarely got in trouble, recalling only a single math-test incident that left Carly upset and her mother disappointed in a typical way; he did not know of any punishment and did not remember details about a January 2024 phone issue. (Tr. 488–89.) On the morning of March 19, 2024, B.G. testified that he saw Carly sitting alone in the cafeteria; after he joked with her and she spilled a drink, she became upset and yelled, and he did not see her again until after school. (Tr. 490.) He later told a mutual friend he was "concerned" about Carly (Tr. 490-92). After

school, B.G. stayed in his mother's classroom for a while and, before he made it home, received a FaceTime from Carly.; he said she seemed upset, he told her not to harm herself or others, and he recalled her saying "it was too late." (Tr. 496:1–25; 497:1–13.)

Other friends of Carly testified, including B.W., who had known Carly since "ninth grade" and that she and Carly "talked easily" and "were nice to each other." (Tr. 523). B.W. went on to testify that she had personally observed changes in Carly leading up to March 19, 2024. (Tr. 525). Testimony from B.W. further revealed that Carly called her after school on March 19th and seemed "jittery, scared, and secretive, maybe." (Tr. 528). B.W. went on the testify that she eventually went to Carly's residence where she discovered what had happened to Carly's mom, and was told by Carly that she had three shots for her stepdad. (Tr. 536).

T.G., a 17-year old Mississippi School of Mathematics and Science (MSMS) student, testified that he met Carly at an MSMS summer camp in 2022 and they kept in touch by phone/Snapchat thereafter. (Tr. 545–46.) He testified that, on March 19, 2024, Carly FaceTimed him appearing on the verge of tears, scared and frightened, saying she had "f*ed up**" but could not bring herself to say what happened before hanging up. (Tr. 549.) T.G. testified he was worried C.G. would hurt herself. (Tr. 552.)

Heath Smylie is Carly's stepfather; by his testimony, he had been living with Carly and her mother, Ashley, since at least 2021 (when Carly was in middle school). (Tr. 566:17–25.) He described Ashley as a devoted teacher who loved Carly and centered her life around her. (Tr. 561–62.) Ashley had previously been married to Kevin Gregg; their second child, Natalie, died from a genetic abnormality, and Ashley and Kevin later divorced. (Tr. 562.) Around the time of the incident, Ashley was having legal difficulties with Kevin over visitation of Carly; Heath added that Carly had told him Kevin used drugs. (Tr. 563.) Heath characterized his relationship

with Carly before March 19, 2024, as positive—they laughed, played video games, and he took her to activities; he enjoyed being a stepdad. (Tr. 563–64.) Ashley was caring and attentive, sometimes disciplining Carly in ordinary ways to keep tabs on her whereabouts. (Tr. 564.)

As to March 19, 2024, Heath testified when he arrived home that afternoon, he exited the carport through an exterior door and then went to enter the kitchen through an interior "second door" which was closed. When he opened it "three to five inches," a gun "flashed" in his face; he said Carly was pointing it when the first shot fired. His hand then went on the gun and, as he twisted it away, the gun fired two more times; one round grazed his upper arm/shoulder, and the muzzle was about a foot from his face. (Tr. 589–90.) He described Carly as screaming and "out-of-her-mind scared," "like she had seen a demon," and said his initial impression was that she thought someone else was in the house. (Tr. 590-91.) He further testified that he "could immediately tell something was *bad* wrong with Carly. Just the screaming. Her eyes were huge. She was–looked like she was terrified." (Tr. 618:15-18.)(emphasis added).

Several medical providers and retained experts testified at the trial of this matter, including Rebecca Kirk, who had been Carly's counselor at Magnolia Counseling (Tr. 1200.) Kirk testified that she had seen Carly in the weeks leading up to March 19, 2024, and had noted various concerning behaviors, including that on February 14, 2024, Carly "ranted, hating herself . . . ." (Tr. 1223). Kirk's testimony about a February 26, 2024 visit note, Ms. Kirk noted that Carly "may be on the spectrum." Kirk clarified that this referenced Carly's own self-report—Carly told her she had "a lot of symptoms of autism." (Tr. 1230:15.) Kirk further testified that Carly said she feels less angry when her mother is less stressed, and Kirk observed Carly appeared emotionally reactive—perhaps somewhat codependent—to her mother's emotions; when Ashley felt something, Carly seemed affected by it. (Tr. 1234:2, 9–12.) Kirk testified that she saw Carly

on March 18, 2024, the day before the incident. (Tr. 1238-1242). Kirk testified that this visit was focused more on Carly's mom than on previous sessions that were focused more on school. (Tr. 1238-1239.) Kirk also opined that at that session, she considered whether she was "serving her the best that I can" based on the apparent inability to get Carly to open up. (Tr. 1238-1239.)

When asked if she believed that Carly loved her mom, Kirk testified that "Yeah, I believe that she did." (Tr. 1249.) She further testified that Carly seemed sensitive to her mom's feelings, and didn't want to hurt her mom's feelings (Tr. 1250-51.)

Kirk was questioned about a treatment note stating Carly "will read Crime and Punishment," after Kirk had said Carly was reading The Castle (which Kirk herself "did not know … very well") and had mentioned The Bell Jar (Tr. 1225). The prosecutor then asked Kirk to "tell us … what Crime and Punishment was about." Defense objected at sidebar as irrelevant and unduly prejudicial, noting Carly had disclosed she had not read the book; the court overruled the defense's objection and allowed the prejudicial testimony. (Tr. 1227). In front of the jury, Kirk delivered a lurid synopsis—describing a "psychopath" student who plans a hatchet murder, kills two people, writes about "why people kill," is "declared insane," and serves eight years "unrepentant" in a Russian labor camp (Tr. 1228-29). She then admitted her underline of the title in the note was "just for grammar," not clinical emphasis[1] (Tr. 1228), and conceded the note reflected Carly had not yet read the book on 2/21 and that she only "think[s]" Carly read it later over spring break (Tr. 1229).

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[1] In arguing to allow Kirk's testimony about the plot of this book, the State argued that the book was important to Kirk's counseling session, so important that Kirk underlined it; however, Kirk revealed that the only reason she underlined the book was based on the fact that it was the title of a book. (Tr. 1227-28).

Olivia Leber, a psychiatric–mental health nurse practitioner at Precise Mind, also testified during the trial. Leber testified that she evaluated and managed Carly Gregg across three encounters in the two months preceding March 19, 2024—January 15th (in person), February 14th (tele-med), and March 12th (tele-med)—with Ashley Smylie present each time; Leber explained that while minors may speak alone, confidentiality is limited when a parent is in the room, and she can diagnose/treat only from what is disclosed and observed (Tr. 1157–1159, 1186–1188).

At the January 15 intake, Carly presented to Leber for depression/anxiety with social stressors tied to family conflict and a recent altercation with her mother; screening forms (including the ADHD checklist and Modified Mini Screen) reflected no hallucinations, and Leber's mental-status exam documented orientation ×3, normal speech, cognition, memory, judgment, and insight, with no psychosis; she diagnosed adjustment disorder with mixed anxiety/depressed mood and major depressive disorder, single episode, moderate, started Zoloft 25 mg, and provided standard SSRI black-box counseling about possible increased suicidal thoughts and the need to stop/seek ER care if they occurred (Tr. 1160–1166, 1171–1176).

On February 14, Carly reported little effect from 25 mg, denied suicidal/homicidal ideation and auditory/visual hallucinations (SI/HI/AVH)[2], and the dose was increased to 50 mg (Tr. 1176–1177). On March 12, Carly reported feeling "like a zombie" on Zoloft; Leber directed a cross-taper off Zoloft and initiation of Lexapro 5 mg, again finding Carly oriented with normal memory/judgment and denying SI/HI/AVH, while noting she cannot know whether a patient is fully adherent to instructions (Tr. 1180–1184).

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[2] However, Leber admitted in cross examination that it is fair to say that patients don't always report everything to their providers. (Tr. 1194.)

On cross, Leber testified that had she known Carly was hearing voices, she would have reconsidered the diagnosis and considered an antipsychotic because hearing voices indicates psychosis; she agreed SSRIs carry a black-box warning for increased suicidal thoughts (Tr. 1193:7-8), acknowledged patients sometimes do not disclose everything (Tr. 1194:15-17), and read that Ashley Smylie declined Prozac because it had previously given her (the mother) suicidal thoughts (Tr. 1194:4-6); the family-history section recorded the father with bipolar disorder/ADHD/substance abuse, and Leber agreed bipolar can be hereditary (Tr. 1191:16-22).

Dr. Amanda Gugliano is a licensed psychologist, Director of the Forensic Evaluation Service at Mississippi State Hospital, and a DMH-credentialed forensic evaluator, and was accepted by the court as an expert in forensic psychology. (Tr. 1271–1276.) In this case, the State contacted her, and she served as a court-ordered evaluator; her report was filed with the clerk for distribution to both sides. (Tr. 1282–1283.) During the interview, Carly admitted vaping marijuana but declined to answer whether she abused prescription medication. (Tr. 1290–1291, 1323–1324.) Gugliano also testified that Carly reported having experienced "reactions" in discontinuing one psychiatric medication and starting another in the week leading up to March 19th. Because medication effects/withdrawal had become a potential issue bearing on sanity at the time of the offense—and that topic is outside her specialty—Dr. Gugliano did not render a sanity opinion and recommended that a forensic psychiatrist conduct that aspect of the evaluation. (Tr. 1322–1323.)

Dr. Jason Pickett testified as a retained expert on behalf of the State. On direct examination, he explained that he is an ER physician, a general psychiatrist who completed a forensic psychiatry fellowship in June 2023 and became board-certified in forensic psychiatry around September 2023; he has worked forensic cases since July 2022. He made clear he is not

child/adolescent–board certified and, while general psychiatry residency included some pediatric exposure, this matter is his first adolescent forensic evaluation. He further acknowledged this was also his first time testifying in a criminal case. He contrasted his background with Dr. Clark's greater tenure and child/adolescent board certification. (Tr. 1442–1444, 1445–1446, 1475–1476.)

On the substance, he explained that his opinion rests on extensive discovery (including contemporaneous video and text messages) and a roughly 4½-hour clinical interview, concluding that—even assuming every diagnosis proposed by the defense expert—Carly understood the nature, quality, and wrongfulness of her acts at the time of the offense. (Tr. 1474, 1477–1478.) Notwithstanding, Dr. Pickett also testified he does not diagnose Carly as a psychopath. (Tr. 1440). Dr. Pickett likewise stated that he did not believe Carly was a diabolical or evil person. (Tr. 1417). He further testified that based on the issues he's observed, it "gets her – gets me to consider M'Naghten. So she's got the ticket. She's got the -- she's got the -- she meets the threshold to consider." (Tr. 1441:2-6).

On cross, the defense underscored—again—that this is his first adolescent evaluation and pressed the absence of a child/adolescent specialty, contrasting him with Dr. Clark's decades of pediatric expertise. Pickett agreed Clark has "a lot more experience," but denied any confirmation bias and maintained that, while he reviewed Carly's journals (which included both benign content and troubling themes about power/violence), he did not base his insanity opinion on the journals alone. He did not recognize the "Life's greatest illusion is innocence" quote as from a video game and accepted that not all entries were probative. (Tr. 1445–1447, 1450–1452, 1453.) He emphasized the unusual nature of a 14–15-year-old killing a parent but described Carly's mental-health profile (anxiety/depression/adjustment disorder noted by treating

clinicians) as common. (Tr. 1448–1449, 1455–1456.) He was skeptical that dissociation explained the offense, stressing what he viewed as high-level, purposeful, executive functioning shown in the contemporaneous record; he also noted malingering of amnesia after homicides is well-documented, while reiterating that he did not rely on jail-era self-reports because of secondary gain. (Tr. 1468–1469, 1472–1473.)

Regarding treatment, he characterized Abilify 10 mg as a moderate adolescent dose and questioned the logic of using Celexa after reported Lexapro issues; he also questioned the reliability of Kevin Gregg's bipolar diagnosis (citing sparse records and confounding substance use), while acknowledging that antipsychotics can be prescribed for behavioral control and are not dispositive of psychosis. (TR 1457–1462.) He noted Carly appeared lucid and competent when he evaluated her on August 30, while emphasizing his task was to opine on her state on March 19; he had only a brief (≈6-minute) phone contact with stepfather Heath Smylie and did not hear Heath's courtroom testimony. (Tr. 1471–1473.)

On redirect, the State elicited that, although this is his first adolescent forensic evaluation, he has completed roughly a hundred competency/insanity evaluations overall. He reiterated that greater years in practice do not guarantee diagnostic accuracy and that—even granting every defense diagnosis—his opinion remains that Carly knew what she was doing and that it was wrong based on the contemporaneous evidence. He also noted that, during his own interview, Carly claimed to be in a dissociative spell, which he found unconvincing in light of the rest of the record. (Tr. 1477–1478.)

The Defense called at the trial of this matter Dr. Andrew Clark, a psychiatrist board-certified in adult, child/adolescent, and forensic psychiatry, described a 28-year career split between treatment and forensic work, long-time teaching at Harvard/MGH and Boston Medical

Center, and extensive juvenile-court experience; he is licensed in Massachusetts and was qualified here as an expert in child and adolescent psychiatry after brief voir dire confirming this was not typically a "forensic psychiatry" designation and that this was his first time testifying in Mississippi. (TR 952–958, 958–961, 961–963.) Retained in August 2024, he first reviewed records, then conducted a four-hour in-person interview with Carly on August 29 at the Rankin County facility (no one else present), he later interviewed stepfather Heath Smylie by video (~90 minutes on Aug. 31), and reviewed VitalCore jail medical records after his interview; although the defense moved several times to admit his written report, the Court sustained the State's hearsay objections, and Dr. Clark proceeded to testify to the bases and methods he said are standard in his field. (TR 963–971, 965–967, 970–976.)

On substance, Clark's overall impression was of a bright, book-loving adolescent who was generally dutiful, socially a follower, close (if complicated) with her mother, affectionate with her stepfather, and strained with her biological father (Tr. 977:15); school was consistently strong, though there was a 7th-grade knife incident that led to a semester at an alternative school (he noted the treating therapist then called it "much ado about nothing" (Tr. 981:10). He recounted early trauma (death of a younger sibling (Tr. 978-79); parental separation with domestic-violence context) and a problematic visitation history with the father. (Tr. 979-80) By ages ~6–9, Carly reported intrusive memories, a persistent unfamiliar male voice ("you're better than them"), and derealization; by ~9–11, low mood progressed, and by ~12 she began cutting—used as an anxiety-coping behavior. (Tr. 981–986.)

According to Dr. Clark, Symptoms escalated in 2023: insomnia treated with melatonin (mother limited dosing), discovery in December 2023 of cutting and a "burner" device, and in January 2024 initiation of weekly therapy with Rebecca Kirk, plus medication management at

Precise with NP Leber: Zoloft 25 mg (ineffective) then 50 mg (left her "zombied"), followed on March 12 by a switch to Lexapro 5 mg while discontinuing Zoloft. (Tr. 985–994.) She began smoking marijuana in February 2024 two-to-four times weekly, which he framed as common adolescent self-medication; academics remained intact except that on March 19 she, for the first time, could not focus at school. (Tr. 994–997.)

Given a paternal history of bipolar disorder and Carly's descriptions of discrete "up" periods (restless, impulsive, risk-taking; ~20% of time over five years), Clark diagnosed Bipolar II disorder and testified that SSRIs can worsen bipolar mood instability. A Precise intake screen (M.I.N.I.) flagged depression, suicidality, elevated/"hyper" periods, panic-spectrum anxiety, obsessions/compulsions, and trauma; he criticized the lack of follow-up on the positive mania screen. He also emphasized common teen minimization and the limited confidentiality teens expect, noting Carly minimized to him. (Tr. 997–1001, 1001–1006, 1006–1012.)

Clark pointed to contemporaneous writings as corroboration: a March 12 journal entry describing a "psychotic break" and directly "speaking" with a voice while debating whether to show the entry to her therapist (Tr. 1014); a sketchbook page with scrawled pleas for help in a different-appearing hand (Tr. 1015); and an April 7, 2023 note ("I am a schizophrenic… I'm scared. I need help.") that, while not diagnostic alone, showed fear about serious mental illness (Tr. 1017). He explained schizophrenia/psychosis concepts for the jury. (Tr. 1013–1019, 1014–1016, 1016–1018.)

He further testified Carly described disordered-eating behaviors (restriction; binge/purge) and long-standing dissociation (derealization), and that in the week before the offense voices grew more urgent and mood swings worsened after starting Lexapro (Tr. 1024); on Sunday March 17, after marijuana, she had ~20 minutes of racing, jumbled thoughts that frightened her.

(Tr. 1020–1024, 1039–1041.) VitalCore records then documented that on March 28 and again a month later Carly reported command auditory hallucinations—including commands to harm her mother—contrary to her denials during his interview (Tr. 1026); after Lexapro was stopped and Abilify (aripiprazole) was started/titrated to 10 mg (a relatively high adolescent dose in his experience), the voices resolved and her mood stabilized markedly by July/August. Lexapro was later replaced with Celexa alongside Abilify. (Tr. 1026–1034, 1028–1030, 1034–1036.)

Describing March 19, Clark said Carly reported waking irritable and unfocused, being confronted by her mother about marijuana after school, going home, letting out the dogs, and then having no memory until she emerged from a culvert to an officer; he noted body-cam showed concern for her stepfather and that subsequent records reflected profound grief. (Tr. 1042–1044.) His diagnostic impressions were: Bipolar II disorder; an "other specified schizophrenia spectrum and related psychotic disorder" (based on escalating, then command, hallucinations); and an "other specified dissociative disorder," with an acute dissociative reaction to a stressful event on March 19 triggered by her mother's discovery amid a psychiatric crisis. He explained that violent acts do sometimes occur in dissociative states, and that Carly fit the literature's "real dissociation" markers (history of dissociation, sudden stress, close relationship to the victim, strong affect, no criminal history), with the caveat that her amnesia was total rather than patchy. (Tr. 1044–1052.)

Clark said he considered and rejected alternative hypotheses—impulsive panic and callous/psychopathic intent—because the kitchen video portrayed her as cool/flat rather than panicked, and several post-incident acts (e.g., hiding the camera in the refrigerator, planning to shoot her stepfather, inviting friends over) were nonsensical for a calculated plan and inconsistent with her prior character. He also emphasized that nothing about the episode looked

like a well-planned scheme and that Carly herself only "assumes" she did it because she cannot remember. (Tr. 1053–1056.) Ultimately, he opined that on March 19 Carly did not understand the nature and quality of her act and could not appreciate right from wrong under the M'Naghten standard. (Tr. 1057–1058.)

On cross, Clark confirmed he was retained in mid-to-late August 2024, evaluated Carly on August 29, and issued his report on September 3; he's testified 150+ times but this was his first in Mississippi, and he conceded he mistakenly told counsel he'd "looked up the statute" (there is no statute—he reviewed the standard and spoke with counsel). (Tr. 1066–1068.) The evaluation lasted about four hours with Ms. Todd present; he did not record the interview but only made notes, and relied on those notes, his memory, and materials provided by the defense. (Tr. 1068–1072, 1084.) He reviewed two home videos (kitchen ~4:10 p.m.; garage at the shooting) for roughly 20 minutes total, and he did not see actual text message printouts—only police summaries—which he acknowledged would have been helpful; he interviewed friend B.G., who reported Carly's marijuana use and said that he told Ashley on March 19, and recounted that Carly FaceTimed him and asked him to come over between the shootings. (Tr. 1073–1076.)

In discussing Carly's present condition at the time of evaluation, Clark noted she chose not to meet with mental health in custody and "cried a lot as the reality began to sink in," but he could not say what she knew about killing her mother; he acknowledged hearing her apologize and ask about her stepfather on video yet emphasized limits on inferring mental state. (Tr. 1077–1080.) He recounted early therapy as unhelpful to Carly, distrust of some therapists, and medical records diagnosing the father with bipolar disorder (Dr. Hardy). (Tr. 1080–1082.) Clark opined Carly "blacked out" from taking the dogs out until police contact but remembered the rest

of the day, and agreed the timing could appear "convenient"; he stressed the need for accurate/complete information, admitted he received records only from the defense, and acknowledged malingering is possible and that a defendant might have motive to fake illness. (Tr. 1082–1085.) When confronted with school records about the 7th-grade knife, he agreed Carly first claimed "protection" from high-schoolers, later changed her story because it "seemed more logical," and that she lied; he also noted her use of a burner phone/old iPad. (Tr. 1088–1090.)

For ages 9–14, he said Carly hadn't become paranoid or lost touch with reality, though she described a longstanding "elitist" voice (not command hallucinations); the first command-type report arose after arrest, and she denied hearing voices on a Precise Clinical questionnaire. (Tr. 1091–1097.) January–March 2024 therapy was frequent (sometimes twice weekly) with no reports of voices or dissociation; the "zoning out" account came from stepfather Smylie. (Tr. 1100–1101.) He identified Carly's anxiety about pleasing her mother and potential discovery of cutting, a burner device, and marijuana; marijuana use began around February (2–4×/week through March 18). (Tr. 1101–1104.)

Regarding medications, he had no proof beyond Carly's report of adherence; she abruptly stopped Zoloft on March 12; Lexapro was prescribed/picked up March 12 at 5 mg (half the typical pediatric 10 mg), started March 12–13 by his understanding; starting March 18 would not substantially change his opinion. (Tr. 1104–1107.) He agreed there were inconsistencies between pre-arrest denials and post-arrest claims of voices; on March 19 Carly remembered being irritable, her mother's search/confrontation, then a blackout until police contact; she answered "yes" to being "the girl" because it seemed "logical," said her "mind was shut off" yet was aware of what was happening afterward, and later reported dreams with gunshots. (Tr. 1107,

1109–1114.)

On diagnoses, he described DSM criteria, framed Carly's state as "mixed" rather than purely hypomanic, had no four-day hypomanic period documented by providers, and noted no bipolar II diagnosis pre-incident. (Tr. 1115–1118.) He considered alternative hypotheses (panic killing or psychopathy) as possible but maintained his opinion that she did not appreciate right from wrong during the critical period, even while acknowledging some behaviors (hiding the gun, peeking, removing the camera, selective texting) can appear to show appreciation; he later agreed the "blackout was not complete." (Tr. 1119–1121, 1129–1131.) Pressed with hypotheticals about texts to T.G., B.G., and B.W. ("I fucked up," blocking a 911 call, "put three in [her mom]"), he nevertheless adhered to his opinion that she still did not appreciate right from wrong. (Tr. 1122–1123.) He opined Lexapro worsened her preexisting conditions but there was "inadequate information" to attribute direct causality to the medication. (Tr. 1123–1124.) On dissociation, he agreed legitimate cases tend toward patchy rather than complete amnesia and said he did not view Carly as callous. (Tr. 1125–1127.)

On redirect, Clark affirmed his conclusions to a reasonable degree of medical certainty; Carly answered his questions, he controlled evaluation conditions, and he noted it's not uncommon for trauma narratives to feel surreal or out-of-body; he did not teach Carly the term "dissociating." (Tr. 1133–1135.) By the August 29 interview, Carly had been on Abilify since March 28 (increased to 10 mg in June/July); neither his post-report interview with B.G. nor S.K.'s March 19 texts changed his opinions. (Tr. 1135–1136.) He stated Carly's first post-blackout memory was being in a drainage ditch (she knew being there wasn't right), and it's logical for an arrested juvenile to conclude they're "in trouble," even without full memory. (Tr. 1136–1138.)

Clark noted that Carly's father, Kevin Gregg had been prescribed antipsychotics—Thorazine, Risperdal, and Zyprexa—and emphasized that the records he reviewed came directly from providers via subpoena. He also pointed out that Carly's medication at Precise was managed by a nurse practitioner, not a psychiatrist. (Tr. 1138–1139.) He explained that people often don't recognize lost time; that Ashley had spoken with therapist Rebecca Kirk; and that Carly, worried her mother would find out about her mental-health issues which might have caused Carly to withhold information from a clinician who communicated with her mother. Given Carly's "pleaser" tendencies, he added, it would be unlike her to argue with police. (Tr. 1140–1142.) Clark concluded that Carly meets most dissociation risk factors, with the main gap being the absence of patchy recall[3]; if the reported "gunshot" dreams are in fact memories, that gap narrows[4]—though the research is limited and not definitive. (Tr. 1142–1144.)

Against that evidentiary backdrop, the case moved on an unusually accelerated schedule. Carly was indicted by a Rankin County grand jury on May 22, 2024—barely two months after the incident. (C.P. 49.) At the first pretrial hearing on June 4, 2024, the court announced the case was "set for trial in September [2024]… This Court does not continue cases." (Tr. 71:18–20; 72:20.) Motivated to preserve the September trial date—having announced it "does not continue cases"—the court, at the State's urging, compelled psychiatric/mental evaluations based solely on

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[3] These are clues that a claimed blackout is genuine dissociation rather than faked or caused by something else. Typical factors include: a major stressor/trauma around the event, pre-existing dissociative or mood/psychotic symptoms, sleep loss, substance use or recent med changes, third-party descriptions of the person seeming "out of it," post-event confusion, and—importantly—memory that's fragmentary ("patchy"), not a perfect wall. (See his discussion that legitimate cases tend to show patchy, not complete, amnesia, Tr. 1126.)

[4] If those "gunshot" dreams are actually intrusive fragments of the event surfacing as memories (rather than just generic dreams), then Carly does have bits of recall—i.e., patchiness—which makes her presentation line up better with genuine dissociative amnesia. (Tr. 1142–1144.)

its speculation that "the Defendant may raise an insanity defense," invoking MRCrP 12.2(b) despite the absence of any Rule 17.4(b) notice. (See C.P. 155; MEC#41, page 1 of 4, last paragraph). In addition to ordering Carly to submit to intrusive insanity and competency exams with a psychiatric expert of the State's choice, this order required the defense to provide the State and its experts all medical records in the defense's possession (C.P. 109; C.P. 155), notwithstanding that Carly had not yet even submitted formal notice of an insanity defense in accordance with MRCrP 17.4(b).[5] When the defense expert had still not been able to complete his psychiatric report in subsequent pretrial hearings, the court berated defense counsel and accused them of "bushwhacking" and seeking a tactical advantage by not producing a psychological report (which, as will be shown, they were not yet even obligated to produce pursuant to the applicable rules.)[6] (Tr. 168–171.)

The court conducted a pretrial hearing on September 10, 2024, pursuant to its scheduling order. Nearly half of Carly's proffered witnesses were excluded based on the trial court's opinion that the defense had not given sufficient information regarding anticipated testimony. (Tr. 241-258). Trial began September 16, 2024, and concluded September 20, 2024. This compressed timeline—and the court's orders and admonitions—framed the presentation of mental-health evidence and is central to the issues raised below.

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Indeed, the State acknowledged in their Motion for Mental Evaluation and M'Naghten Analysis (MEC#22) that "the defendant has not yet met the requirements of an insanity defense [but] the State *believes* the defendant will make that argument and requests that the defendant undergo an insanity evaluation." (C.P. 109, 2nd par.) (emphasis added).

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These hearings aired nationwide on Court TV; even after defense counsel invoked the controlling rules and explained that they were not intentionally withholding discovery, the court reiterated its rulings and sharpened its criticism of counsel.

SUMMARY OF THE ARGUMENT

> "Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right." *Ramos v. Louisiana*, 590 U.S. 83, 111 (2020).

> *"It's not y'all's name that gets run in the newspaper if something happens. It's mine. This Court is—this case is set for trial in September. I see no reason why this case can't be tried in September."* (Tr. 71:16–22)

This Case proceeded to trial on an exceptionally compressed schedule and under a series of statutory and constitutional errors that tainted both sentencing and the overall fairness of the proceedings. The arguments are organized as follows: Part One addresses errors in the sentencing phase; Part Two addresses structural and procedural rulings that undermined fundamental fairness. Carly was indicted barely two months after the incident and brought to trial within six months—effectively a "rocket docket."[7] In a case of this magnitude—requiring collection and review of extensive medical and mental-health records, multiple evaluations, substantial family/background history, and a disputed motive—such acceleration is extraordinary in Mississippi criminal practice. The compressed timeline—set in motion when, at the first pretrial hearing, the trial court announced it "does not continue cases"—together with erroneous and unconstitutional pretrial orders, deprived the defense of a fair opportunity to prepare and present a constitutionally adequate case and culminated in the imposition of life without parole on a

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[7] The counsel for the State as well as Carly's lead trial counsel basked in the local, state, and nationwide media publicity during the course of time the case was pending and even afterwards, appearing on numerous television interviews and internet-based podcast episodes. Further, the trial judge appeared to make decisions based on his fear of negative publicity, stating at one point, "It's not y'all's name that gets run in the newspaper if something happens. It's mine. This Court is—this case is set for trial in September. I see no reason why this case can't be tried in September." (Tr. 71:16–22)

juvenile.

Part One of Appellant's Brief addresses the issues with Carly's sentences. First, (as to Counts I & II), the court used the wrong framework for a juvenile tried after July 1, 2024. As amended, Miss. Code Ann. § 97-3-21(2) creates a juvenile-specific scheme: § 97-3-21(2)(b) (first-degree murder) authorizes the jury to fix the penalty at life, and if the jury declines, the court must impose a term of 20–40 years; Life without parole (LWOP) is not listed. By contrast, § 97-3-21(2)(c) (capital murder) expressly gives a jury the choice between life and life without parole (LWOP), or a 25–50 year term if the jury does not fix the penalty. Reading the subsections together—and applying the canons against surplusage, lenity, and negative implication (expressio unius)—the Legislature deliberately omitted LWOP from first-degree murder for juveniles while explicitly authorizing it for capital murder. "Life" in (2)(b) therefore means parole-eligible life; if "life" already included LWOP, the distinct LWOP option in (2)(c) would be entirely pointless and superfluous. The court's instructions letting the jury toggle parole on Count I (first-degree) were therefore ultra vires, and the LWOP sentence on Count II is likewise infirm for a juvenile. The State effectively conceded instruction error (C.P. 1195–96). None of this is harmless: it goes to who decides, what options legally exist, and how youth must be considered.

Miller/Parole Procedure: even assuming, *arguendo*, that Carly could have legally been sentenced to LWOP (which we do not concede), the court failed to hold a *Miller*-compliant hearing before determining Carly's eligibility *vel non* for a parole-eligible life sentence on Count I, and it delegated the parole question to the jury—something Mississippi law and § 97-3-21(2) do not permit. As to Count Two (Attempted Murder) a LWOP sentence is wholly improper under *Graham v. Florida,* 560 U.S. 48 (2010*)* and its progeny as *Graham* proscribes life

sentences for any non-murder convictions.[8]

Prejudicial and improper closing argument by the State: Mississippi law forbids inviting jurors to speculate about parole because it injects "arbitrary factors" into sentencing. See *Williams* and its progeny. Here, the prosecutor suggested that if Carly received a parole-eligible sentence she could be out in as little as a year (Tr. 1588:13–17, stating "we cannot guarantee she will stay there one year, or ten years"), an assertion that is not only patently false, it also misleadingly reframed the stakes. The prosecutor also attempted to instill fear in the jury by suggesting that if they allow parole, they may end up sitting next to Carly in a theatre, among other places. This is a clear violation of the "golden rule" in closing arguments. The prejudice is manifest: the jury promptly asked, "What is life without parole? Years-wise." (Court's Ex. 3.) That question confirms parole became a focal point of deliberations—precisely the harm *Williams* warns against—and warrants reversal of the sentence (at minimum, a new sentencing proceeding).

Part Two of Appellant's Brief addresses overall trial fairness. From the outset, the court announced it would grant no continuances ('this court does not continue cases') and enforced a September trial date "at all costs." Within that posture, the court compelled psychiatric examinations and wholesale disclosure of defense-held medical records before any Rule 17.4(b) notice and without Rule 12.2 findings—short-circuiting the Rules and tilting strategy to the State. That order violated the text and sequence of MRCrP 12.2/17.4 and raised serious Fifth, Sixth,

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[8] "The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham v. Florida*, 560 U.S. 48, 82 (2010).

Fourteenth, and Fourth Amendment concerns (with Mississippi constitutional parallels), including the act-of-production problem. The resulting prejudice—loss of timing, forced disclosure, and the State's head start—cannot be undone. In short, the cumulative effect of these rulings implicated multiple constitutional protections and substantially compromised Carly's right to a fair trial.

Other evidentiary abuses of discretion: Allowing counselor Rebecca Kirk to summarize Crime and Punishment over objection of defense counsel on relevance and prejudicial grounds was a clear abuse of discretion.

Relief requested: Vacate Carly's sentences—including LWOP on Count II—and remand for resentencing under § 97-3-21(2) with a *Miller*-compliant hearing after proper notice and opportunity to be heard and/or clarify that Carly's life sentences are parole-eligible pursuant to the new amendments to § 97-3-21. Alternatively (and independently), reverse and remand for a new trial based on the cumulative constitutional and rule-based violations, suppressing any fruits of the improperly compelled psychiatric processes and directing further proceedings before a different judge.

To the extent any errors identified herein were not preserved by contemporaneous objection, this Court should review them under the plain-error doctrine because they are obvious, affected substantial rights, and implicate fundamental constitutional protections; leaving them uncorrected would seriously affect the fairness, integrity, and public reputation of judicial proceedings. Alternatively, and independently, any failure to raise or properly preserve these issues below constituted ineffective assistance of counsel under *Strickland v. Washington*; the record is sufficient to resolve the claim(s) on direct appeal or, if the Court deems further development necessary, the matter should be remanded for an evidentiary hearing.

ARGUMENT

PART ONE-THE SENTENCES

ISSUE I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY GIVING SENTENCING INSTRUCTIONS AS TO COUNTS I AND II THAT WERE IMPROPER UNDER MISSISSIPPI CODE ANN. SECTION 97-3-21(2)(b) (Amended Effective July 1, 2024)

> "When a criminal statute is ambiguous, the rule of lenity mandates we interpret the statute in favor of the accused." *McGlasten v. State*, 328 So. 3d 101, 102, (¶4) (Miss. 2021).
>
> ***
>
> "If this was error, it is error that weighs in favor of the defendant." (State's Response to Motion for New Trial, or in the Alternative, Judgement [sic] Notwithstanding the Verdict. C.P. 1196.).

The trial court erred when it instructed the jury that it had an option to sentence Carly to life without eligibility for parole in Counts I and II. (C.P. 1093-96.) This is plain error and requires this Court to vacate Carly's sentences of life *without* eligibility for parole for those counts and to remand this case for her to be lawfully sentenced in accordance with § 97-3-21(2)(b) – the controlling statutory provision at the time of Carly's trial and conviction. Notwithstanding that Carly's trial counsel did not object to the giving of these instructions (C.P. 1489), it is plain error because the sentence of life without the eligibility of parole is in conflict with the construction of Section 97-3-21 of the Mississippi Code, the controlling sentencing statute in question.

In 2024, the Mississippi Legislature substantially amended § 97-3-21. The amendment became effective July 1, 2024. For purposes of comparison and contrast, we have included the following table:

Mississippi Code Ann. § 97-3-21.

Prior to July 1, 2024:	Effective July 1, 2024:
(1) Every person who shall be convicted of first-degree murder shall be sentenced by the court to imprisonment for life in the custody of the Department of Corrections.	(1) Except as otherwise provided for a juvenile offender in subsection (2) of this section, every person who is: (a) Convicted of first-degree murder shall be sentenced by the court to imprisonment for life in the custody of the Department of Corrections.
(2) Every person who shall be convicted of second-degree murder shall be imprisoned for life in the custody of the Department of Corrections if the punishment is so fixed by the jury in its verdict after a separate sentencing proceeding. If the jury fails to agree on fixing the penalty at imprisonment for life, the court shall fix the penalty at not less than twenty (20) nor more than forty (40) years in the custody of the Department of Corrections.	(b) Convicted of second-degree murder shall be imprisoned for life in the custody of the Department of Corrections if the punishment is so fixed by the jury in its verdict after a separate sentencing proceeding. If the jury fails to agree on fixing the penalty at imprisonment for life, the court shall fix the penalty at not less than twenty (20) nor more than forty (40) years in the custody of the Department of Corrections.
(3) Every person who shall be convicted of capital murder shall be sentenced (a) to death; (b) to imprisonment for life in the State Penitentiary without parole; or (c) to imprisonment for life in the State Penitentiary with eligibility for parole as provided in Section 47-7-3(1)(f).	(c) Convicted of capital murder shall be sentenced (i) to death; (ii) to imprisonment for life in the State Penitentiary without parole; or (iii) to imprisonment for life in the State Penitentiary with eligibility for parole as provided in Section 47-7-3(1)(c)(iii). (2)(a) For the purposes of this section, "juvenile offender" means a person who had not reached the age of eighteen (18) years at the time of the commission of the offense. (b) A juvenile offender who is convicted of first-degree murder after July 1, 2024, may be sentenced to life imprisonment in the custody of the Department of Corrections if the punishment is so fixed by the jury. If the jury fails to fix the penalty at life imprisonment, the court shall fix the penalty at not less than twenty (20) nor more than forty (40) years in the custody of the

	Department of Corrections. (c) A juvenile offender who is convicted of capital murder after July 1, 2024, may be sentenced to life imprisonment in the custody of the Department of Corrections or life imprisonment without eligibility for parole in the custody of the Department of Corrections if the punishment is so fixed by the jury. If the jury fails to fix the penalty at life imprisonment or life imprisonment without parole, the court shall fix the penalty at not less than twenty-five (25) nor more than fifty (50) years in the custody of the Department of Corrections. (d) For a juvenile offender who was convicted of first-degree murder or capital murder prior to July 1, 2024, and who is entitled to a hearing under this subsection, the judge who presided over the trial, or a judge appointed by the senior circuit judge, if the presiding judge is unavailable, shall fix the penalty.

Underscoring this reversible error is the fact that the State, in its closing argument in the sentencing phase, stated to the jury that, "[w]e'd ask that she be sentenced to prison for life without the possibility of parole . . . ." (Tr. 1586: 20-22.) The State further commented on parole to the jury and implied that if it sentenced her to life with eligibility for it, that it would be unknown how much time Carly would actually serve in prison and upon release she would be a danger to society. (Tr. 1588-89.)

Although Carly's trial counsel stated to the jury in its argument as to sentencing, "[y]ou have three options: you can do life without parole, life with parole, or you can let the judge make the determination," (Tr. 1590: 17-19) such a statement is contrary to the legislative intent to the new provisions of § 97-3-21, as described below.

1. **Rule of Lenity**

If there is ambiguity in the language of subsections 2(b) and (c) above, it must be strictly construed by an appellate court with any doubts to be resolved in favor of the accused. *Brown v. State*, 102 So. 3d 1087, 1089 (¶7) (Miss. 2012). This is a "principle deeply imbedded in our law." *Id.* The governing precedent dates back well over a century. See, e.g., *Stewart v. State*, 95 Miss. 627, 634, 49 So. 615, 616 (1909).

Even the State, in its response to Carly's Motion for New Trial (or alternatively, for Judgment Notwithstanding the Verdict), recognized that the jury instruction at issue was improper. (C.P. 1196) (stating that "out of an abundance of caution, the State filed jury instructions which allowed the jury to consider life with the possibility of parole. If this was error, it is error that weighs in favor of the defendant.") *Id.* Notwithstanding the generosity of the State in looking out for Carly, the error is much more fundamental than allowing the jury to decide life versus life with or without parole, as is demonstrated in the arguments beginning with Issue II, infra.

2. **Negative-Implication Canon**

"The expression of one thing implies the exclusion of others (*expressio unius est exclusio alterius*)." Scalia, A. & Garner, B.A., Reading Law: The Interpretation of Legal Texts, p. 107 (2012), Thomson/West.

Recently, the state Court of Appeals addressed the application of this canon in *Beale v. State*, 361 So. 3d 673 (Miss. App. 2022):

> ¶27. When the Legislature expanded the attempt statute in 2013 and enacted a new subsection focusing exclusively on attempted murder, it pointedly did not include the requirement of an "overt act" in subsection 1. **Even if the language of the statute were not plain and unambiguous, our precedent reminds us that "where a statute enumerates and specifies the subject or things upon which it is to operate, it is to be construed as *excluding* from**

> **its effect all those not expressly mentioned or under a general clause."** (*Internal citations omitted.*)
>
> **This "common rule of statutory construction is *expressio unius est exclusio alterius*, which translates as 'expression of the one is exclusion of the other.' "** *** Therefore we are compelled to find that the Legislature, in using the language of "an act" in the attempted murder subsection 2 as opposed to the "overt act" language of subsection 1, did not require the description of an overt act in an indictment for attempted murder.
>
> ¶28. Because the Legislature did not include a requirement to describe an overt act in an indictment under the attempted murder statute, we hold an indictment for this crime does not require the description of an overt act. As a result, we find the indictment in this case was sufficient.

Id. at 679-680.

Here, when the Legislature amended the sentencing statute for murder (§ 97-3-21) in 2024, it expressly included a jury option to sentence a juvenile convicted of *capital murder* after July 1, 2024 to life without parole in subsection 2(c). However, the Legislature ***excluded*** this jury option for juveniles convicted of *first-degree murder* after the same date in the immediate preceding subsection of 2(b). Carly's jury should not have been given the seriously flawed sentencing instructions for Counts I and II, as the jury lacked the authority to even consider life without eligibility for parole in this case.

Had the Legislature intended to empower a jury to sentence a juvenile found guilty of first-degree murder after July 1, 2024 to life without parole eligibility, it would have expressly stated so in subsection 2(b). Because it did not, the negative-implication canon instructs that this option must be excluded from consideration as a sentencing option for any juvenile convicted of first-degree murder from July 1, 2024 and beyond.

3. **Related-Statutes Canon**

"Statutes *in pari materia* are to be interpreted together, as though they were one

law."

Scalia, A. & Garner, B.A., Reading Law: The Interpretation of Legal Texts, p. 252 (2012), Thomson/West.

Section 97-1-7(2) governs the sentencing of attempted murder. It provides:

> (2) Every person who shall design and endeavor to commit an act which, if accomplished, would constitute an offense of murder under Section 97-3-19, but shall fail therein, or shall be prevented from committing the same, shall be guilty of attempted murder and, upon conviction, shall be imprisoned for life in the custody of the Department of Corrections if the punishment is so fixed by the jury in its verdict after a separate sentencing proceeding. If the jury fails to agree on fixing the penalty at imprisonment for life, the court shall fix the penalty at not less than twenty (20) years in the custody of the Department of Corrections.

A harmonious interpretation in the body of statutory law relevant to Carly's sentences in Counts I and II suggests that, just as she was unlawfully sentenced to life without eligibility of parole for first-degree murder (Count I), she likewise was unlawfully sentenced the same for the attempted murder conviction (Count II). "When the Legislature enacts multiple statutes *in pari materia* – that is, upon the same subject – this Court generally will read the statutes together to interpret them harmoniously." *Brown*, at 1092 (¶23).

In this case, §§ 97-1-7 and 97-3-21 are *in pari materia* insofar as the proper sentence for Carly should be: life **with** eligibility for parole. While the Legislature did not amend § 97-1-7 contemporaneously with its 2024 amendment of § 97-3-21, discussed above, to reach any other conclusion would violate the "Absurdity Doctrine." *See*, e.g., *State of New Mexico v. Montano*, 557 P.3d 86, 92 (N.M. 2024) (when invoked, the absurdity doctrine gives the judicial branch the power to avoid an absurd result). To construe otherwise – that is, that Carly must be sentenced to life *without* parole eligibility for the attempt conviction in Count II – would be an absurd result, as it would be a harsher sentence than the one for actual

completed murder in Count I, which should properly be life **with** parole eligibility. "A provision may be either disregarded or judicially corrected as an error if failing to do so would result in a disposition that no reasonable person could approve." Scalia, A. & Garner, B.A., Reading Law: The Interpretation of Legal Texts, p. 234 (2012), Thomson/West.

ISSUE II. CARLY'S SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE AS TO COUNT II IS CATEGORICALLY UNCONSTITUTIONAL

As set forth in argument as to Issue I, above, the jury was improperly given the option to sentence Carly to life imprisonment, or life with the possibility of parole. (C.P. 1095). The negative implication of not choosing "life with the possibility of parole," is that the jury effectively sentenced Carly to life without the possibility of parole (LWOP). Not only was the jury improperly given that option pursuant to the plain reading of the murder statute at issue, but a sentence of LWOP for attempted murder is unconstitutional pursuant to *Graham v. Florida*, 560 U.S. 48 (2010).

In *Graham v. Florida*, the defendant, Terrance Jamar Graham, was charged at age sixteen with armed burglary with assault or battery and attempted armed robbery. He pled guilty under a plea agreement in December 2003 and was placed on probation, but following new offenses and a probation violation, the Florida trial court in 2006 sentenced him to life without parole on the armed burglary conviction and 15 years' imprisonment for attempted armed robbery (560 U.S. 48, 53–56 (2010)).

In considering the constitutionality of the LWOP sentence, the United States Supreme Court held that the Eighth Amendment prohibits sentencing a juvenile offender to life without parole for any nonhomicide offense. According to the Court, "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.

A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." Id. at 82. The Court emphasized that juveniles are categorically less culpable than adults because of their immaturity, vulnerability to outside influences, and greater capacity for change. As such, sentencing a juvenile to life without parole for a nonhomicide crime makes an irrevocable judgment that the child is incorrigible, a determination that is constitutionally impermissible at the outset. Instead, States must provide juvenile offenders with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation, though they are not guaranteed eventual release. The Court concluded that "a juvenile offender who did not commit homicide may not be sentenced to life without parole" because such a sentence denies hope, rehabilitation, and the chance for redemption. Id. at 74–75.

In *Manuel v. State*, 48 So. 3d 94 (Fla. Dist. Ct. App. 2010), the Florida Second District Court of Appeal vacated the life-without-parole sentences of a thirteen-year-old convicted of robbery with a firearm and attempted first-degree murder, holding that *Graham v. Florida* applies to attempted murder. The *Manuel* court rejected the argument of the state that "*Graham* does not apply to Mr. Manuel because his convictions for attempted murder should be considered homicide offenses, not nonhomicide offenses." Id. at 97. The court reasoned that homicide, by definition, requires the death of another human being, and therefore attempted murder is a "nonhomicide" offense. Id. (stating that under the definition of homicide, "[i]t is necessary for the act to result in the death of a human being." (quoting *Tipton v. State*, 97 So.2d 277, 281 (Fla.1957)). Relying on *Graham*, the *Manuel* court concluded that life without parole for juveniles who commit nonhomicide crimes is unconstitutional, no matter how serious the offense. The court emphasized that while attempted murder is grave, "[l]ife is over for the victim

of murder, but for the victim of a nonhomicide crime, life . . . is not over and normally is not beyond repair," and thus categorically falls within *Graham's* protection. *Manuel*, 48 So.3d at 97 (citations omitted).

In Carly's case, the jury was improperly presented with the option of sentencing her to "life" or "life with the possibility of parole," for Count II, attempted murder, which by negative implication resulted in a de facto sentence of life without parole (C.P. 1095). That sentence cannot stand under controlling precedent. The holdings in *Graham v. Florida*, 560 U.S. 48 (2010), and *Manuel v. State*, 48 So. 3d 94 (Fla. Dist. Ct. App. 2010), clearly proscribe any sentence of life without parole for Carly's attempted murder conviction. *Graham* established a categorical rule that juveniles may not receive life without parole for any nonhomicide offense, and *Manuel* applied that rule directly to attempted murder, emphasizing that attempted murder is by definition a nonhomicide offense because no life is taken. Accordingly, any life-without-parole sentence imposed in this case as to Count II (attempted murder) is unconstitutional and must be vacated.

Beyond the categorical bar against life without parole for nonhomicide offenses, Carly's case also raises a distinct constitutional error: the trial court failed to conduct the individualized *Miller* hearing required before imposing any life sentence on a juvenile convicted of homicide, instead delegating that decision to the jury without the constitutionally mandated safeguards.

ISSUE III. THE TRIAL COURT ERRED BY NOT CONDUCTING A MILLER-COMPLIANT HEARING TO DETERMINE ELIGIBILITY VEL NON FOR LIFE WITH/WITHOUT POSSIBILITY OF PAROLE AS TO COUNT I AND/OR COUNT II.

This issue proceeds on the premise that, by operation of Mississippi's parole statute, the life sentences imposed on Count I (first-degree murder) and Count II (attempted murder) are

parole-ineligible. See Miss. Code Ann. § 47-7-3. As explained in Issue I, we maintain the Legislature intended "life imprisonment" for a juvenile convicted of first-degree murder to include parole eligibility. And as to attempted murder, as argued in Issue II, LWOP for nonhomicide crimes for juveniles is categorically unconstitutional. Assuming *arguendo* this Court disagrees, we turn to the trial court's failure to provide and apply a constitutionally adequate, individualized *Miller* analysis under *Miller v. Alabama*, *Montgomery v. Louisiana*, and their Mississippi progeny.

Framed as a due-process and Eighth-Amendment problem, this Court should review de novo whether the trial court provided the constitutionally required individualized *Miller* hearing and adequate notice/opportunity to be heard. See, e.g., *Chandler v. State*, 242 So. 3d 65, 68 (¶7) (Miss. 2018). And even though trial counsel did not lodge a contemporaneous objection, the Court should reach the issue under the plain-error doctrine, because constitutional defects at sentencing implicate fundamental rights and the fairness of the proceeding. *Brown v. State*, 995 So.2d 698, 703 (¶¶21–23) (Miss. 2008). As in *Brown*, the error is not harmless under *Chapman v. California*, 386 U.S. 18 (1967), since the State cannot show beyond a reasonable doubt that conducting an impromptu "sentencing phase" without meaningful notice or mitigation did not contribute to the outcome. See Id. at ¶¶24–27. Accordingly, the sentence must be vacated and the case remanded for a *Miller*-compliant resentencing with proper notice and a meaningful opportunity to present mitigation. In the alternative, the Court should vacate the sentence and impose a parole-eligible sentence.

In Carly's case, immediately after the jury returned from deliberations and the trial court announced verdicts of "guilty" as to all three charges and poled the jury for unanimity, the court moved straight into the "sentencing phase."

> **THE COURT:** All right. Ladies and Gentlemen, with you having returned a verdict guilty in Count I and Count II of the indictment, we will now proceed to the sentencing phase of the trial.
>
> The State of Mississippi may call its first witness. (Tr. 1579:2-8).

Although the judge did ask first the State and then the defense whether they wished to call witnesses—and both declined—the parties were given no meaningful notice or time to marshal witnesses or otherwise prepare for a sentencing proceeding of this magnitude. Proceeding in that fashion denied Carly a real opportunity to present mitigation and fell short of the constitutional framework required by *Miller v. Alabama*, 567 U.S. 460 (2012), which demands an individualized hearing that meaningfully considers youth and its attendant characteristics before a juvenile may be exposed to life without parole—reserved only for the "rare" juvenile whose crime reflects permanent incorrigibility rather than transient immaturity. See id. at 479–80.

The trial court's immediate pivot from the jury's guilty verdict to sentencing—asking the State and then the defense if they wished to call witnesses on the spot—did not satisfy the constitutional requirement for a separate *Miller* hearing. *Miller v. Alabama,* 567 U.S. 460 (2012), and its progeny require more than a perfunctory inquiry; they mandate a distinct proceeding affording the juvenile defendant a meaningful opportunity to present mitigation evidence addressing the hallmark features of youth. *Montgomery v. Louisiana*, 577 U.S. 190 (2016) (stating "A hearing where 'youth and its attendant characteristics' are considered … is necessary to separate those juveniles who may be sentenced to life without parole."); *Parker v. State*, 119 So. 3d 987 (Miss. 2013). That was not done in Carly's case. By collapsing sentencing into the trial's conclusion and denying defense counsel adequate time to prepare and summon witnesses,

the court deprived Carly of the individualized assessment that *Miller* demands. Accordingly, her sentence must be vacated and the case remanded for a constitutionally sufficient *Miller* hearing.

While the defense did not object to this sequence of events, we respectfully submit that the trial court's failure to conduct a constitutionally adequate *Miller* proceeding is reviewable as plain error. Mississippi appellate courts may notice an unpreserved error where the trial court "deviated from a legal rule," the error is "plain," and it affects substantial rights—particularly where a fundamental constitutional protection is at stake. See, e.g., *Conners v. State*, 92 So. 3d 676, 682 (Miss. 2012); *Brown v. State*, 995 So. 2d 698, 703 (Miss. 2008). Because the parole statute makes a juvenile's "life" sentence functionally LWOP, the court had an affirmative duty under *Miller v. Alabama* and *Montgomery v. Louisiana* to provide an individualized sentencing in which "youth and its attendant characteristics" are meaningfully considered before imposing a parole-ineligible life term. Short-circuiting that process—by pivoting to sentencing immediately after the verdict and inviting witnesses without affording defense time to marshal mitigation—both contravened the governing legal rule and substantially affected Carly's Eighth Amendment rights. See *Parker v. State*, 119 So. 3d 987, 995–96 (Miss. 2013) (adopting *Miller* factors); *Montgomery*, 577 U.S. at 208 (hearing where youth is considered is necessary to give effect to *Miller*).

Nor did the hearing comport with due process. First, due process requires "notice and opportunity for hearing appropriate to the nature of the case," i.e., a meaningful chance to be heard at a meaningful time and in a meaningful manner. See *Lankford v. Idaho*, 500 U.S. 110, 126–28 (1991) (reversing where a defendant lacked fair notice and opportunity to prepare for the precise sentencing exposure the court ultimately imposed); *Specht v. Patterson*, 386 U.S. 605, 608–10 (1967) (sentencing that turns on new, outcome-determinative findings requires

adversarial protections); *Gardner v. Florida*, 430 U.S. 349, 358–62 (1977). ("it is now clear that the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause.") Here, the court pivoted directly from the verdict to "sentencing," asking—on the spot—whether the State or defense wished to present witnesses. Because Mississippi's parole statute makes a juvenile's "life" sentence parole-ineligible, that immediate turn functionally exposed Carly to LWOP without affording reasonable notice or time to marshal *Miller* mitigation (records, lay witnesses, and qualified expert testimony).[9] That procedure violated core due-process guarantees.

Second, the due-process violation is compounded by the Eighth Amendment framework itself. *Montgomery v. Louisiana* explains that a *Miller* proceeding must give effect to the substantive rule by providing "a hearing where 'youth and its attendant characteristics' are considered as sentencing factors," which is "necessary to separate those juveniles who may be sentenced to life without parole from those who may not." 577 U.S. 190, 208 (2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 476–80 (2012)). A same-day, unprepared "sentencing phase" deprived Carly of that meaningful opportunity. Due process does not permit a de facto LWOP outcome to rest on a record created without advance notice and a fair chance to gather and present *Miller* evidence.

In *Presley v. State*, 474 So.2d 612 (Miss. 1985), the defendant, Presley, was caught shoplifting steaks at a Kroger. When confronted by store staff, he displayed an open pocketknife and left; he was later arrested and convicted of armed robbery. After the jury declined to fix life imprisonment, the judge held a brief, bifurcated sentencing: the State introduced certified copies

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[9] Although the record does not reveal the exact time of day the "sentencing" phase of the trial began, we would point out that it was on a Friday afternoon (September 20, 2024).

of two prior felonies, the court confirmed a PSI had been provided, defense offered no mitigation, and Presley was sentenced as a habitual offender to forty years without parole under § 99-19-81. Id. at 613-20. Despite the PSI and the judge's offer to hear mitigation, the Mississippi Supreme Court held the sentencing record was inadequate and vacated the sentence, remanding for a fuller hearing.[10] The Court emphasized that even when defense counsel has not developed the record, the trial court "must consider all facets, background and record in a sentencing hearing in order that a just and proper sentence may be imposed," and should require counsel to present any mitigating circumstances on remand. Id. at 620 (vacating and remanding for an "additional sentence hearing and resentencing").

Presley squarely supports our complaint that Carly's "sentencing phase" was too cursory and occurred without meaningful time to marshal mitigation or witnesses. If the Supreme Court vacated a habitual-offender sentence even though a PSI existed and defense declined to put on mitigation, it follows *a fortiori* that Carly's immediate, on-the-spot proceeding—without advance notice, preparation time, or a developed mitigation record—was inadequate. *Presley* confirms the trial court bears an affirmative duty to ensure a complete, informed sentencing record; that duty is even weightier in a juvenile case requiring the individualized analysis mandated by *Miller/Montgomery*. The remedy *Presley* ordered—vacatur and remand for a full, properly developed sentencing hearing—is exactly what we seek here: a *Miller*-compliant resentencing after proper notice, time to prepare, expert assistance, and presentation of comprehensive mitigation.

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The *Presley* court stated that, "we recognize that there are cases, even when the appellant and his attorney fail to prepare and complete a sentencing record, where the trial court must consider all facets, background and record in a sentencing hearing in order that a just and proper sentence may be imposed." Id. at 620.

Alternatively—and independently—the absence of an objection only underscores ineffective assistance under *Strickland v. Washington*, 466 U.S. 668 (1984). Competent counsel would have (1) insisted on a separate *Miller* hearing (or a continuance) once it became clear that "life" would be parole-ineligible under § 47-7-3, (2) had a qualified adolescent-development/forensic-psychology expert to address the *Miller* factors, and (3) gathered school, medical, correctional, and family-history mitigation and lay witnesses to address each *Miller* factor.[11] Failing to do so falls below an objective standard of reasonableness given the centrality of *Miller* evidence in juvenile LWOP determinations and Mississippi's burden-shifting framework placing the onus on the juvenile to show *Miller* considerations bar LWOP. See *Jones v. State*, 122 So. 3d 698, 702 (Miss. 2013); *Cook v. State*, 242 So. 3d 865, 873 (Miss. Ct. App. 2017).[12]

Prejudice is equally plain. With proper notice and a developed *Miller* record, there is at least a reasonable probability the sentencer would have either rejected a parole-ineligible life sentence on Count I (first-degree murder) or fashioned a parole-eligible outcome consistent with *Miller/Montgomery* and Mississippi law. That reasonable probability—sufficient to undermine confidence in the result—satisfies *Strickland's* prejudice prong, especially where the court proceeded without the very mitigation *Miller* requires before a juvenile may be deemed among the "rare" offenders warranting LWOP. Nor can the failure to seek time to marshal mitigation

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In this regard, virtually all lay witnesses who could have offered character and background evidence for Carly were excluded at trial. It is unclear whether the court would have permitted them to testify in mitigation; in any event, by moving immediately to a truncated sentencing, the trial-phase prohibition effectively carried forward and foreclosed their mitigation testimony.

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See *Gregg Gets Life*, Jackson Jambalaya, https://kingfish1935.blogspot.com/2024/09/watch-verdict.html (last visited Sept. 8, 2025).

witnesses and evidence be characterized as strategy; it was omission, not tactics. The proper remedy is to vacate the sentence and remand for a full, *Miller*-compliant resentencing after adequate notice and preparation, with expert assistance and an opportunity to present comprehensive mitigation.

Additionally, MRCrP 26.3 authorizes the court to order a presentence investigation and requires that any report be furnished to the parties at least forty-eight hours before sentencing; Rule 26.4 contemplates holding the sentencing hearing only after the parties have had that opportunity to review and address the report. In a case of this magnitude—where a juvenile faces a potential parole-ineligible life term—the court abused its discretion by declining to order a presentence investigation and by pressing ahead without continuing the proceedings to allow completion and disclosure of a PSI.

The State may argue that *Jones v. Mississippi*, 593 U.S. 98 (2021) supports the LWOP sentences based on the holding that no separate finding of "permanent incorigibility" is required; See Id. at 1313-15; however, *Jones* did absolutely nothing to dilute *Miller* or *Montgomery*. To the contrary, *Jones* reaffirmed that a court may impose LWOP on a juvenile only after giving genuine, individualized consideration to youth and its attendant characteristics. Id. at 1311, 1315. As the majority held, *Miller* "mandated only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a life-without-parole sentence." Id. at 1311. Discretion is therefore constitutional only if it is meaningfully exercised through that process.

That process never happened here. Carly was sentenced immediately upon conviction—without a presentence investigation, without time to marshal mitigation, without expert testimony on adolescent development, and without lay mitigation witnesses. The court

conducted no on-the-record, individualized assessment of the "hallmark features" of youth or Carly's capacity for rehabilitation.

Based on the foregoing argument, we respectfully submit that this Court must vacate the sentence and remand for a *Miller*-compliant resentencing that (1) provides reasonable advance notice, (2) permits defense expert and lay mitigation, and (3) allows the court to make an individualized determination on a complete record. If the Court deems the due-process claim unpreserved, it remains reviewable as plain error given the fundamental nature of the right and the functional LWOP at stake.

ISSUE IV. THE PROSECUTOR MADE IMPROPER AND HIGHLY PREJUDICIAL COMMENTS DURING CLOSING ARGUMENTS AT SENTENCING PHASE OF THE TRIAL

As discussed in Issue III, *supra*, immediately following the jury's verdicts of guilty on Counts I, II, and III, the trial court immediately went into the "sentencing phase" of the trial. The trial court asked the State to call its first witness, although the State declined and simply offered to submit argument. During said argument, the State made several highly improper comments that we submit would require resentencing.

1) Parole speculation (barred by *Marks/Williams*).

The most egregious of the improper comments made by the prosecutor during argument in the sentencing phase was the following:

> If she is given the possibility of parole, no one in this room knows how long she will stay there. *We cannot guarantee she will stay there one year or ten years*. We have no control over that. (Tr. 1588:13-17).

Not only was this statement by the prosecutor patently false, and the prosecutor knew it was false,[13] but Mississippi has consistently disapproved of argument which discusses potential punishment of a defendant: although "[i]t is well established in Mississippi that attorneys are given wide latitude in arguing their cases to the jury[,]tactics which are inflammatory, highly prejudicial and reasonably calculated to unduly influence the jury are not permissible." *Manning v. State*, 835 So.2d 94, 101 (¶21) (Miss. App. 2002) *(*Citing *Hiter v. State*, 660 So.2d 961, 966 (Miss.1995)). The appellate court in *Manning* went further, stating that "it is well settled in Mississippi jurisprudence that closing argument which discusses the possible penalty a defendant can receive is improper." Id. (Citing *Marks v. State*, 532 So.2d 976, 983 (Miss. 1988).

The standard of review which our appellate courts must apply to allegations of lawyer misconduct during opening statements or closing arguments is "whether the natural and probable effect of the improper argument is to create unjust prejudice against the accused so as to result in a decision influenced by the prejudice so created." *Flowers v. State*, 842 So.2d 531, 553 (¶63) (Miss. 2003)(citations omitted). Incidentally, we know that these statements affected the jury's deliberations and their consideration of whether to impose life or life with parole, as they submitted a question to the trial court inquiring, "[w]hat is life in prison without parole? Years-wise." (Tr. 1593:3-4; Ct Ex 3).

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At the out-of-presence jury-instruction conference, the court and counsel discussed the real-world effect of parole eligibility; no one suggested Carly could be released in as little as a year(Tr. 1490–91). Yet in summation the prosecutor warned that if Carly were parole-eligible "we cannot guarantee she will stay there one year or ten years," injecting a specter she knew—or should have known—did not exist to inflame rather than inform the jury. See, e.g.,*White v. State*, 228 So.3d 893, 904-905 (¶28)(Miss. App. 2017) ("Counsel cannot . . . state facts which are not in evidence, and which the court does not . . . know [or] appeal to the prejudices of men by injecting prejudices not contained in some source of the evidence."

In *Marks v. State*, our supreme court stated that "we have consistently disapproved of arguments which refer to the potential sentence in a given case." 532 So.2d 976, 983 (Miss. 1988) (Citing *Williams v. State*, 445 So.2d 798, 813 (Miss.1984) ("Reference to the possibility of parole should the defendant not be sentenced to die are wholly out of place...."); *Smith v. State*, 220 So.2d 313, 317 (Miss.1969) (improper to argue that finding defendant not guilty by reason of insanity would result in his being released once being found sane); *Hartfield v. State*, 186 Miss. 75, 91, 189 So. 530, 533 (1939) (prejudicial error to tell the jury that a manslaughter verdict or a life sentence, would amount to no punishment at all); *Abney v. State*, 123 Miss. 546, 549-550 (1920) (reversible error for the prosecutor, in urging a murder conviction, to state that the maximum penalty for manslaughter is 20 years and the minimum is in the discretion of the court); *Minor v. State*, 101 Miss. 107, 107-08, 57 So. 548 (1911) (reversible error to state in closing argument that, if manslaughter verdict is brought in, judge does not have to sentence defendant to the penitentiary); *Windham v. State*, 91 Miss. 845, 851, 45 So. 861, 862 (1907) (in a murder case it is improper for a prosecutor to argue in closing argument about the punishment that can be imposed; in a close case such as this, argument that judge could sentence defendant to term in penitentiary for manslaughter was "a very fine bid for a conviction of manslaughter.").

2) Inflammatory fear-mongering (barred by *Hiter/Manning*).

The second highly improper and inflammatory comment made by the prosecutor in summation was the following: "If she were paroled, nothing would stop her from walking into a school… a shopping mall… a grocery store… the movie theaters." (Tr. 1588-89). This is an appeal to fear and community alarm, and is highly "inflammatory, highly prejudicial and reasonably calculated to unduly influence the jury," which is not permissible. *Hiter v. State*, 660 So.2d 961, 966 (Miss. 1995); *Manning v. State*, 835 So.2d 94, 101 (¶21) (Miss. Ct. App. 2002).

It also veers toward an improper "golden-rule" style plea by inviting jurors to imagine future personal danger.

The prosecutor's litany—"school… shopping mall… grocery store… movie theaters"—explicitly asks jurors to envision themselves and their families as prospective targets and to punish Carly to "protect" the community. That is classic golden-rule rhetoric: it invites a verdict based on personal fear rather than record evidence or the *Miller* factors. It is also a "send-a-message" appeal to community alarm, which our courts forbid as inflammatory and unduly prejudicial. See *Hiter*, 660 So. 2d at 966; *Manning*, 835 So. 2d at 101 (¶21). In a juvenile LWOP context—where individualized consideration is constitutionally required—this sort of speculative future-danger argument is especially improper and warrants a new, properly conducted sentencing hearing.

3) Misstatement of the governing sentencing law for juveniles.

The following statement was improper and clearly a misstatement of the law in the context of the sentencing phase of the trial: "In the eyes of the law… Carly Gregg is an adult." (Tr. 1586:15-17). For *Miller* sentencing, the law is the opposite: "children are constitutionally different from adults for purposes of sentencing," and youth/its hallmarks must be given meaningful weight before LWOP can be imposed. See *Miller v. Alabama,* 567 U.S. 460, 471–80 (2012). Telling the jury she is "an adult" risks misleading them about the *Miller* framework and is further evidence that the entire sentencing phase of this trial was fatally flawed.

Based on the foregoing, we respectfully contend that the "natural and probable effect of the improper argument [by the State] create[d] unjust prejudice against [Carly and resulted] in a decision influence by the prejudice so created." *Flowers,* 842 So.2d at 553, (¶63).

To the extent trial counsel did not lodge contemporaneous objections, this Court should review the prosecutor's parole-speculation and community-alarm pleas for plain error. Mississippi appellate courts may correct "clear or obvious" errors that affect substantial rights and seriously compromise the fairness and integrity of proceedings. See *Marks v. State*, 532 So.2d 976, 983 (Miss. 1988); *Hiter v. State*, 660 So.2d 961, 966 (Miss. 1995); *Manning v. State*, 835 So.2d 94, 101 (¶21) (Miss. Ct. App. 2002). This case is of a piece with *Flowers v. State*, where the Court recognized plain error based on prosecutorial misstatements in closing argument. *Flowers II*, 842 So.2d 531, 550–56 (¶¶52–74) (Miss. 2003); *Flowers v. State*, 158 So.3d 1009, 1043 (¶21) (Miss. 2014). The State's assertions that "no one … knows how long she will stay there" and that, if paroled, "nothing would stop her" from entering schools, malls, groceries, and theaters were both inaccurate and calculated to inflame, diverting the jury from the *Miller* factors to forbidden speculation about parole and future danger. Given the stakes—a potential LWOP sentence for a juvenile—the prejudice is manifest and warrants a new, *Miller*-compliant sentencing hearing.

Alternatively, relief is warranted under *Strickland v. Washington*, 466 U.S. 668 (1984). According to Mississippi courts, the "standard of review for a claim of ineffective assistance involves a two-pronged inquiry: the defendant must demonstrate that his counsel's performance was deficient and that the deficiency prejudiced the defense of the case." *Ross v. State*, 954 So.2d 968, 1003 (¶78)(Miss. 2007). The first prong takes into account whether an attorney's actions or inactions were reasonable under all the circumstances, and considering whether such conduct was a result of trial strategy. Id. at (¶79). No reasonable strategy supports allowing the prosecutor to (1) misstate parole consequences, (2) advance golden-rule/community-alarm hypotheticals, and (3) press for juvenile LWOP without objection or a request for curative instructions. Counsel

also failed to insist on a true *Miller* hearing—or at minimum a continuance—to marshal mitigation witnesses and evidence tailored to the *Miller* factors. This performance fell below an objective standard of reasonableness, and there is a reasonable probability that, but for counsel's errors, the result would have been different (at least life with parole or deferral to judge for term sentencing). The combination of an abbreviated, unprepared "hearing" and uncorrected, prohibited argument undermines confidence in the sentence and satisfies both *Strickland* prongs.

ISSUE V. TO THE EXTENT THAT CARLY'S SENTENCE(S) IS TO BE CONSTRUED AS LWOP AS IMPOSED BY THE JURY, THIS SENTENCE WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE AND UNCONSTITUTIONAL UNDER MILLER AND ITS PROGENY

Assuming arguendo Carly's sentence as to Count I and/or Count II is life without parole (LWOP), it cannot withstand constitutional scrutiny under *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). In Miller, a 14-year old was sentenced to LWOP after he and others were convicted of killing a neighbor after a group of them had gotten high and intoxicated on alcohol. The Supreme Court held that the sentence was unconstitutional. Noting the Court's Eighth Amendment jurisprudence requiring "proportionality" in sentencing, *Miller*, 567 U.S. at 470, the Court cited its prior decision in *Roper v. Simmons*, 543 U.S. 551 (2005,) in which it held that the death penalty for those under 18 is unconstitiutional. *Miller*, 577 U.S. at 466.

Following that logic, the Court held that "life without parole for juveniles" is itself tantamount to the death penalty. Id. at 470. Consequently, the Court held that "mandatory life-without-parole sentences for juveniles violates the Eighth Amendment." Id. "Because juveniles diminished culpability and greater prospects for reform," the Court continued, "they are less deserving of the most severe punishments." Id. at 471. The Court further explained:

> First, children have a " 'lack of maturity and an underdeveloped sense of responsibility,' " leading to recklessness, impulsivity, and heedless risk-taking. Roper, 543 U. S., at 569. Second, children "are more vulnerable . . . to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. Ibid. And third, a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievable depravity." Id., at 570.

Id.

Consequently, the Court held that principle of "individualized sentencing" is paramount when considering LWOP sentencing of minors. This requires the minor be given "individualized consideration" of all factors in sentencing. As explained by the Court,

> our individualized sentencing cases . . . teach that in imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult. To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its
> hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. . . . And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Id. at 477-78.The Court also noted that a sentence of LWOP of a juvenile is reserved for those juveniles with "irreparable corruption," which must be found in an individualized consideration by the sentencer of all of these factors. Id.

The Court reaffirmed and elaborated on its holding in *Miller* in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), where the defendant had spent nearly 50 years in prison

for a crime committed when he was 17 years old. Further elaborating on Miller, the Court cogently stated:

> Miller held that mandatory life without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on cruel and unusual punishments. By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, mandatory life without parole poses too great a risk of disproportionate punishment. Miller required that sentencing courts consider a child's diminished culpability and heightened capacity for change before condemning him or her to die in prison. Although Miller did not foreclose a sentencer's ability to impose life without parole on a juvenile, the Court explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect" 'irreparable corruption.

Id at ___ (internal quotation marks and citations omitted).

The overwhelming weight of evidence in this case demonstrates not irreparable corruption, but mental illness, transient crisis, and treatability, none of which were adequately considered. Friends and teachers described Carly as affectionate, intelligent, and socially connected—precisely the kind of adolescent whose conduct reflects immaturity and illness, not permanent incorrigibility. Even the State's psychiatrist testified she is not a psychopath or "evil" (Tr. 1417, 1440), while the defense expert documented bipolar disorder, psychotic-spectrum symptoms, and dissociation that stabilized under treatment (Tr. 1026–1034). Her stepfather, the victim of her assault, testified she appeared "out-of-her-mind scared," "terrified," with "huge eyes" (Tr. 590–91, 618), underscoring that the offense arose from crisis, not a fixed and callous disregard for life. *Miller* forbids sentencing such a juvenile to die in prison; as the Supreme Court held, only the "rare juvenile offender whose crime reflects irreparable corruption" may constitutionally receive LWOP, *Miller*, 567 U.S. at 479–80. To impose LWOP here, in the face of abundant testimony showing Carly's redeemability and

responsiveness to treatment, is against the overwhelming weight of the evidence and violates the Eighth Amendment.

We now turn to address the *Miller* factors in turn, demonstrating the lack of indicia contained within the record:

No evidence of permanent incorrigibility. Under *Mille*r and *Montgomery*, LWOP is constitutionally reserved for the "rare" juvenile whose crime reflects "irreparable corruption," not one whose conduct stems from "transient immaturity." *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012); *Montgomery v. Louisiana*, 577 U.S. 190, 208 (2016). Nothing in Carly's record approaches that showing. The State's own psychiatrist disclaimed psychopathy and "evil" (Tr. 1417, 1440). Defense evidence documented bipolar disorder, psychotic-spectrum symptoms, and dissociation that stabilized with treatment (Tr. 1026–1034). Lay witnesses described Carly as affectionate, intelligent, and socially connected—classic indicators of capacity for reform, not fixed depravity. Her stepfather's account that she appeared "out-of-her-mind scared," "terrified," with "huge eyes" (Tr. 590–91, 618) is inconsistent with the cold, remorseless profile that might support the "rarest" category. Prosecutorial assertions of "zero remorse" are argument, not proof of permanent incorrigibility. On this record, LWOP exceeds the constitutional limit.

***Miller* factor 1—age and its hallmark features**. Carly was fourteen. The very features *Miller* tells courts to weigh—immaturity, impulsivity, risk-taking, and limited appreciation of consequences—were amplified here by acute, treatable mental illness. Nothing suggests unusual adult-like maturity or planning sophistication that would cut against youth mitigation. See *Miller*, 567 U.S. at 477–78.

***Miller* factor 2—family and home environment.** Even the State acknowledged serious family strain (substance issues with her father), undercutting the prosecutor's "perfect home life"

narrative. The point under *Miller* is not to blame the family but to recognize environments from which a child "cannot usually extricate [herself]." Id. The record reflects precisely the kind of instability that counsels against the harshest penalty.

***Miller* factor 3—circumstances of the offense and pressures.** The evidence points to an acute crisis episode rather than calculated, profit-motivated, or sadistic violence: the contemporaneous observations of terror and dissociation, and the medical proof of psychotic-spectrum symptoms, all place the conduct in a transient, illness-driven frame. There is no evidence of gang pressure, leadership in an ongoing criminal enterprise, or a sustained course of predatory behavior.

***Miller factor 4*—youth-related incompetencies in the system**. Carly was sentenced immediately after the verdict, with no presentence investigation, no time to marshal mitigation witnesses, and no meaningful opportunity to develop expert mitigation—precisely the sort of youth-related limitations in decision-making and legal navigation *Miller* flags as salient. See id. at 477–78.

***Miller* factor 5—possibility of rehabilitation.** This record affirmatively shows treatability: her symptoms stabilized with medication and treatment (Tr. 1026–1034), and the State's expert rejected the very diagnoses (psychopathy/evil) most predictive of non-rehabilitation. That evidence is the opposite of "irreparable corruption." See *Montgomery*, 577 U.S. at 208.

Process matters too. Even after *Jones v. Mississippi*, the sentencer must "follow a certain process—considering an offender's youth and attendant characteristics—before imposing a life-without-parole sentence." 141 S. Ct. 1307, 1311 (2021). Discretion alone is not enough; it must be exercised meaningfully. Here, there was no genuine, individualized *Miller*

assessment—no PSI, no mitigation case, no reasoned findings tethered to the five *Miller* factors—only an immediate post-verdict disposition. LWOP imposed on that skeletal showing cannot be squared with *Miller/Montgomery/Jones*.

Bottom line*:* Stripped of the bare fact that a homicide occurred, the evidentiary record contains no proof—let alone the rare, compelling proof—of permanent incorrigibility. Every *Miller* consideration either weighs against LWOP or was never meaningfully developed. The sentence is against the overwhelming weight of the evidence and unconstitutional under the Eighth Amendment. The Court should vacate and remand for a Miller-compliant resentencing at minimum; on this record, it should hold LWOP unavailable.

PART TWO–CARLY WAS DEPRIVED OF A FAIR TRIAL

ISSUE VI. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY PROSPECTIVELY DENYING ANY REQUESTS FOR CONTINUANCE WITHOUT EVALUATING THE CIRCUMSTANCES THAT MIGHT ARISE DURING THE PROCEEDINGS

This was one of the first—and most telling—abuses of discretion, and it colored everything that followed. At the very first pretrial hearing on June 4, 2024, during the court's initial exposure to the case, the court noted the September 16, 2024 trial date and warned that "this court does not continue cases." (Tr. 72:18–22). The colloquy continued:

"I appreciate Mr. Smiley's [sic] position. But I'm just going to be frank. Y'all have heard me say it today. It's not y'all's name that gets run in the newspaper if something happens. It's mine. This Court is—this case is set for trial in September. I see no reason why this case can't be tried in September." (Tr. 71:16–22). The court then reiterated, "I want to make this clear. Y'all have heard me say this multiple times today. This Court does not continue cases. So if you need that order, you need to go on ahead and apply for it immediately." (Tr. 72:18–22) (emphasis added).

We respectfully submit that this categorical, advance refusal to consider a continuance was an abdication—not an exercise—of discretion. It framed every subsequent ruling, prioritized the calendar over case-specific needs, and set the stage for the errors that followed. The United States Supreme Court has cautioned against a "myopic insistence upon expeditiousness in the face of a justifiable request for delay." *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964) (citing *Chandler v. Fretag,* 348 U.S. 3 (1954)). The following excerpt from *Leonard v. Leonard*, 486 So.2d 1240 (Miss. 1986), is directly on point and extremely instructive:

> The granting or denying of a continuance is ordinarily a matter committed to the sound discretion of the trial judge. *Red Enterprises, Inc. v. Peashooter, Inc*., 455 So.2d 793, 796 (Miss.1984). Reversal on appeal is considered seriously only where the failure to grant a continuance represents a clear abuse of discretion. *Bay Springs Forest Products, Inc. v. Wade*, 435 So.2d 690, 692 (Miss.1983). *Any court which has an automatic policy that in a certain type of case requests for continuances "are not granted by this court under any circumstances" is not exercising discretion*. It is acting arbitrarily and capriciously and its actions in this regard are entitled to little immunity from reversal.

Leonard v. Leonard, 486 So.2d 1240, 1241 (Miss. 1986) (emphasis added).

Although no party formally challenged the court's blanket "no-continuances" stance at trial, this Court may—and should—review the error under the plain-error doctrine because it permeated the proceedings, including pressuring Carly into intrusive mental evaluations before she had properly put sanity at issue. Plain error applies where an error results in a manifest miscarriage of justice or "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Conners v. State*, 92 So. 3d 676, 685 (¶15) (Miss. 2012) (quoting *United States v. Atkinson*, 297 U.S. 157, 160 (1936)). A prospective, across-the-board refusal to consider any continuance—regardless of circumstances—was error, and on this record it seriously affected the fairness and integrity of the proceedings.

The scheduling posture was not just background—it drove substance. To preserve the September trial date the court moved from a blanket "no-continuances" stance to coercive pretrial orders that short-circuited the Rules. Without the predicates required by MRCrP 12.2 and 17.4, the court compelled psychiatric examinations and broad disclosure of defense-held medical records, conferring a tactical advantage on the State and forcing premature exposure of defense strategy. The next section details why those orders exceeded the court's authority and violated core constitutional protections, and why the resulting prejudice warrants relief.

ISSUE VII. THE TRIAL COURT ERRED BY COMPELLING PSYCHIATRIC EVALUATIONS ABSENT THE FINDINGS REQUIRED BY MRCP 12.2 AND 17.4, THEREBY ABUSING ITS DISCRETION AND DEPRIVING HER OF A FAIR TRIAL

By motion filed June 17, 2024, the State sought an order compelling Carly to undergo a mental evaluation. (C.P. 109.) The motion expressly conceded that Carly "had not yet met the requirements of an insanity defense," and instead relied on an assertion that the "defendant alleged mental health concerns claiming to be incompetent to stand trial." Id. The record reflects pretrial discussion about Carly's mental health, but we find no statement by Carly (or defense counsel) declaring her incompetent to stand trial; and even assuming arguendo that such a statement had been made, it would not satisfy the procedural prerequisites for ordering an intrusive sanity-at-the-time-of-offense evaluation.

After a hearing—and conditional agreement by defense counsel[14]—the court ordered both a competency exam and an M'Naghten insanity evaluation. In its July 3, 2024 order, the court compelled a criminal-responsibility exam not because Carly noticed an insanity defense, but

[14] The record reflects that trial counsel agreed that the State could have Carly evaluated but only after Carly had been evaluated by the defense expert.

because she "may" raise one: "since the Defendant herein may raise an Insanity Defense … the mental evaluation of Defendant is to include an investigation and analysis of Defendant's mental condition at the time of the alleged offense(s) … in accordance with MRCrP 12.2(b)." (C.P. 155).[15] That language shows the court anticipated a possible insanity defense and, to keep the September 2024 trial date intact, ordered a State-oriented sanity evaluation in advance so the prosecution would have "plenty of time" to prepare rebuttal. That sequencing is the opposite of what Rule 12.2 contemplates.

By its terms and design, MRCrP 12.2 conditions any court-ordered criminal-responsibility exam on a triggering act by the defense—written notice that the defendant intends to rely on insanity or to introduce expert evidence of a mental condition. See *Stevenson v. State*, 361 So.3d 162, 169 (¶27) (stating that "[h]ad Stevenson intended to allege an insanity defense, the correct criminal procedure would have been for Stevenson's defense counsel to serve a 'written notice of the intention to offer a defense of insanity.'") (citing MRCrP 17.4). Only after that notice (and typically upon the State's motion and a showing of need) may the court order an exam directed at the defendant's sanity at the time of the offense. The July 3 order inverted that sequence. It conflated an ordinary competency inquiry with an anticipatory sanity evaluation and invoked Rule 12.2(b) without the predicate of defense notice. In practical effect, the court compelled disclosure of defense strategy and enabled the State to marshal rebuttal experts and tailor its case—all to keep the September setting intact—while depriving the defense of the timing and confidentiality protections the Rule affords.

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15 In addition to recognizing that the insanity defense had not yet been properly raised, the July 3 order failed to articulate any "reasonable grounds to believe that the defendant is mentally incompetent," a showing that is required by MRCrP 12.2(a) before even a competency examination can be ordered.

This premature, court-initiated 12.2(a) and 12.2(b) exam was an abuse of discretion and structurally unfair for several reasons:

A. No "reasonable grounds" supported a competency exam under Rule 12.2(a).

Rule 12.2(a) authorizes a competency exam only if "the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent." MRCrP 12.2(a). The State's motion did not supply such grounds. It relied instead on (i) a mischaracterization—asserting the defense claimed incompetence when it did not—and (ii) the fact that the defense retained a private evaluator. (C.P. 109) Retaining a consultant is not a "reasonable ground" to believe present incompetency; and absent concrete facts—observations, history, or behavior—the predicate for a compelled competency exam was not made. The court's order for imcompetency/insanity evaluation likewise cited no "reasonable grounds" upon which to believe that Carly was incompetent, as required by Rule 12.2(a). In fact, immediately after the July 2, 2024 hearing on the State's motion for mental evaluation, the court held it's obligatory monthly juvenile justice detention hearing. (Tr. 97-100). During that hearing, the court noted the only issue with regard to her present mental state was "prior testimony regarding self-harm of this particular juvenile while she was not incarcerated. However, the Court has heard of no such danger while she is incarcerated." (Tr. 99). This seemingly contradicts any assertion that the court had "reasonable grounds to believe that she [was] mentally incompetent," as is required by the rules.

B. A sanity-at-the-time-of-offense exam under Rule 12.2(b) requires defense notice under Rule 17.4(b); "may" is speculation, not notice.

Rule 12.2(b) permits a mental-responsibility (M'Naghten) exam only "if the defendant has timely raised a defense of insanity pursuant to Rule 17.4(b)." Until the defense actually

notices that affirmative defense, the State has no entitlement to probe the defendant's mental state at the time of the offense. Here, the State conceded that Ms. Gregg "has not yet met the requirements of an insanity defense," and merely predicted she "will make that argument." (C.P. 109); (See also Tr. 95:9-22). That prediction does not satisfy Rule 17.4(b) and cannot trigger Rule 12.2(b). Ordering a retrospective sanity evaluation in the absence of notice exceeded the Rule's text.

C. The order improperly conflated two distinct inquiries.

Competency (present ability to consult with counsel and understand the proceedings) and criminal responsibility (knowledge of the nature/quality of the act or right-wrong at the time) are distinct. See MRCrP 12.2; Rule 17.4(b). The court leapt from any purported competency concern to a full M'Naghten analysis, expanding scope based solely on a prediction of a possible defense—not on a proper predicate.

D. The compelled exam, ordered before the defense placed mental condition properly at issue, raises Fifth and Sixth Amendment concerns.

Compelled psychiatric examinations intrude upon the privilege against self-incrimination and the right to counsel. The prosecution's ability to obtain and use such an exam exists only after the defendant actually places mental condition at issue—by notice or by offering psychiatric evidence. See, e.g., *Estelle v. Smith*, 451 U.S. 454 (1981) (use of uncounseled, compelled psychiatric statements violates Fifth/Sixth); *Buchanan v. Kentucky*, 483 U.S. 402 (1987) (State's rebuttal permitted only after defense opens the door); *Kansas v. Cheever*, 571 U.S. 87 (2013) (same principle). Here, because no insanity notice had been given, the order prematurely compelled statements and impressions the State would not otherwise receive, raising classic *Estelle* concerns.

Moreover, the order's sweeping privilege waiver—extending to "medical, psychiatric, psychological, education, dependency/addiction, and employment" records—was also overbroad and unnecessary to any properly cabined competency inquiry, impinging recognized privileges and privacy interests beyond what any rule authorizes.

E. Structural unfairness and tactical tilt to the State.

By forcing a Rule 12.2(b)-type evaluation in early July against a September 16 trial setting, the court afforded the prosecution a head start to secure rebuttal experts, preview the defense theory, and script cross-examination—while pressuring the defense to reveal or abandon a potential insanity theory prematurely. That timing advantage distorts the adversarial balance the Rules are designed to preserve and is not curable by later limiting instructions. Further, the compelled evaluation chilled confidential consultations with defense experts, risked derivative use of compelled statements, and forced strategic disclosure before Rule 17.4(b)'s decision point. Once disclosed, those statements and impressions cannot be "un-seen." Moreover, compelling the defense to produce medical records in its possession can also trigger the Fifth Amendment "act-of-production" problem (the production itself tacitly admits existence, possession, and authenticity). See *United States v. Hubbell*, 530 U.S. 27, 36-37 (2000).

By ordering Carly to undergo both competency and insanity examinations absent the procedural prerequisites, the trial court acted outside the bounds of its discretion. This amounted to an abuse of discretion and was a violation of Carly's Constitutional rights, of epic proportions. Mississippi courts have long held that judicial discretion is not unfettered, but must be exercised in accordance with established legal standards. See, e.g., *Terrell v. State*, 952 So. 2d 998, 1005 (Miss. Ct. App. 2006). The court's ruling here improperly expanded Rule 12.2 beyond its plain terms, compelling an intrusive psychiatric examination without the factual predicate required by

law. We respectfully contend that this was further evidence of the Court's intent to rush this case to trial and to avoid putting the State in a position to request a continuance so as to obtain rebuttal expert opinions.

In ruling in favor of the State, and ordering the intrusive competency and insanity evaluation, the trial court mistakenly relied on *Ballard v. State*, 768 So.2d 924 (Miss. App. 2000) (Tr. 96:13-20); however, *Ballard* does not dispense with Rule 17.4(b)'s written-notice requirement. The trial court cited *Ballard* to suggest that formal written notice of an insanity defense is unnecessary to invoke the court's coercive power. That misreads the case and the Rules. *Ballard* addressed an evidentiary ruling excluding a defense expert's ultimate M'Naghten opinion on the ground that his report lacked the "magic words." Applying URCCC 9.04 and M.R.E. 103, the Court of Appeals reversed because there was no unfair surprise—the State plainly knew insanity was the defense and presented its own expert to rebut it. *Ballard* neither considered nor approved a court-initiated mental-responsibility exam before the defense places sanity at issue. By contrast, the current Mississippi Rules of Criminal Procedure squarely control here: Rule 12.2(b) authorizes a sanity-at-the-time-of-offense exam only if "the defendant has timely raised a defense of insanity pursuant to Rule 17.4(b)," i.e., by written notice. The July 3 order compelling a M'Naghten analysis absent any Rule 17.4(b) notice is therefore beyond the Rules' grant of authority, and *Ballard* provides no safe harbor.

Here, unlike *Ballard*, the defense had not noticed insanity under Rule 17.4(b) at the time the court ordered Carly to undergo competency and sanity evaluation. The State's motion rested on a prediction that the defense "will" assert insanity and on the fact that the defense retained a private evaluator—neither of which constitutes Rule 17.4(b) notice or Rule 12.2(a) "reasonable grounds" to doubt competency. Compelling a July M'Naghten exam on that record both

exceeded Rule 12.2(b)'s textual predicate and conferred the very tactical tilt *Ballard* sought to avoid—handing the State a preview of the defense while locking in the September trial setting. Nor was a court-ordered, premature 12.2(b) exam necessary to avert "trial by ambush." Rule 17.4(b) sets the notice deadline at the pretrial-motions date (August 30, 2024) and expressly contemplates court discretion for later notice upon good cause.[16] If, after the defense timely notices insanity, the State believes it needs additional time to evaluate or secure rebuttal expertise, the proper and far less drastic remedy is a continuance or adjusted deadlines—not a speculative, court-initiated sanity examination in advance of any notice. This is another instance of the court subordinating Carly's rights to its calendar, insulating the State from having to seek a continuance the court had pre-announced it would deny.

F. Due Process: Forcing a Mental-Responsibility Exam Before Rule Predicates Violates Fundamental Fairness

The Fourteenth Amendment and Article 3, §14 of the Mississippi Constitution guarantee fundamental fairness in criminal proceedings. According to the Fifth Circuit, "[t]he conviction of a defendant after a trial that is fundamentally unfair, whatever the cause of such unfairness, violates Fourteenth Amendment due process. *Fitzgerald v. Estelle*, 505 F.2d 1334, 1336 (5th Cir. 1974) (Citing e.g., the mob domination cases: *Frank v. Mangum*, 237 U.S. 309, 35 S.Ct. 582, 59 L.Ed. 969 (1915) (Holmes, J., dissenting), and *Moore v. Dempsey*, 26s U.S. 86, 43 S.Ct. 265, 67 L.Ed. 543 (1923); the conviction of an accused person while he is legally incompetent: *Pate v.*

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The trial court's scheduling order as pertains to pretrial motions is as follows: "The parties must file pre-trial motions with the Circuit Clerk (and either personally or electronically serve counsel opposite) before 5:00 p.m. on the 30 day of August, 2024, or they will be deemed waived or abandoned for that reason. See MRCrP 16.1(a)." (C.P. 55-56).

Robinson, 383 U.S. 375, 377, 86 S.Ct. 836, 838, 15 L.Ed.2d 815 (1966); and a conviction predicated upon no evidence at all: *Thompson v. City of Louisville*, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960). "Whenever a defendant has been convicted as the result of such a gross malfunction, the result is that the state's criminal justice system has operated to deny due process." *Id.*

Synthesizing the foregoing, we respectfully submit that forcing Carly into a court-ordered M'Naghten evaluation before the Rule predicates were met made the proceedings fundamentally unfair. The order inverted Mississippi's sequencing—there were no Rule 12.2(a) "reasonable grounds" to doubt competency and no Rule 17.4(b) written notice of an insanity defense to trigger any sanity-at-offense exam under Rule 12.2(b)—yet the court compelled an intrusive examination that extracted testimonial statements, previewed defense strategy, and, via a sweeping records waiver, pierced privileges (see M.R.E. 503) that protect the attorney–client and psychotherapist relationship. That shortcut created a grave risk of erroneous deprivation and irreversible strategic prejudice: once the State and its experts hear compelled statements and impressions, they cannot be "un-heard," and the tactical tilt cannot be cured by later instructions. By contrast, less restrictive alternatives were obvious and adequate—wait for timely Rule 17.4 notice or, if notice is given and time is tight, grant a short continuance—so the court's choice was unnecessary to any legitimate governmental interest in docket control. In short, by skipping the Rules' safeguards and harvesting compelled mental-responsibility evidence on speculation, the court allowed the adjudicatory system to operate in a way that was structurally unfair, violating due process. Based on the foregoing, we respectfully submit that Carly's convictions should be reversed and remanded for a new trial.

ISSUE VIII. THE TRIAL COURT ERRED WHEN IT ALLOWED REBECCA KIRK TO SUMMARIZE THE BOOK CRIME AND PUNISHMENT OVER OBJECTION OF DEFENDANT

During rebuttal, the State questioned counselor Rebecca Kirk about a treatment note stating Carly "will read Crime and Punishment," after Kirk had said Carly was reading The Castle (which Kirk herself "did not know … very well") and had mentioned The Bell Jar (Tr. 1225). The prosecutor then asked Kirk to "tell us … what Crime and Punishment was about." Defense objected at sidebar as irrelevant and unduly prejudicial, noting Carly had disclosed she had not read the book; the court overruled the defense objection and allowed the prosecutor to proceed. (Tr. 1227). In front of the jury, Kirk delivered a lurid synopsis—describing a "psychopath" student who plans a hatchet murder, kills two people, writes about "why people kill," is "declared insane," and serves eight years "unrepentant" in a Russian labor camp (Tr. 1228). She then admitted her underline of the title in the note was "just for grammar," not clinical emphasis as had been misrepresented to the trial judge by the State. (Tr. 1228). Kirk further conceded the note reflected Carly had not yet read the book on 2/21 and that she only "think[s]" Carly read it later over spring break (Tr. 1229).

Allowing this testimony was an abuse of discretion: the plot of a nineteenth-century Russian novel is not a fact "of consequence" in this case (MRE 401–402); there was no foundation that Carly read it (MRE 602); any minimal probative value was substantially outweighed by the danger of unfair prejudice and juror confusion given the mirrored themes of murder and insanity (MRE 403); it invited an improper propensity inference from Carly's supposed interest in "dark literature" (MRE 404(b)); and it was not tied to any reliable clinical method or opinion from this non-insanity expert (MRE 702–703).

The decision of a trial court's to admit or exclude evidence is reviewed under an abuse-of-discretion standard. *Burgess v. State*, 178 So.3d 1266, 1278 (¶30) (Miss. 2015) (citing *Whitaker v. State*, 146 So.3d 333, 336 (Miss.2014) ; *Smith v. State*, 986 So.2d 290, 295 (Miss.2008)). "Though an abuse-of-discretion standard affords great discretion to the trial judge, '[t]his Court has not hesitated to invoke its authority to order a new trial and allow a second jury to pass on the evidence where it considers the first jury's determination of guilt to be based on extremely weak or tenuous evidence[.]'" *Coleman v. State*, 269 So.3d 88, 95 (¶29) (Miss. 2018) (quoting *Dilworth v. State* , 909 So.2d 731, 737 (Miss. 2005)). Admitting inflammatory and/or prejudicial proof that does not tie the accused to the charged offense is an abuse of the trial court's discretion. Id. (¶28) (citing *Walker v. State*, 878 So.2d 913, 917 (Miss. 2004) (holding that the trial court erred in admitting a towel allegedly containing the defendant's semen because "the [State]'s failure to positively connect the semen on the towel to [the defendant] render[ed] the towel inadmissible").

The New Jersey Supreme Court affirmed the Appellate Divisions's reversal of a conviction where the State had a witness read pages of the defendant's violent rap lyrics to prove "motive and intent." *State v. Skinner*, 95 A.3d 236 (N.J. 2014). In so holding, that court held the lyrics were "highly prejudicial" and carried "little or no probative value" because they were expressive, fictional writings not tied by a strong nexus to the charged shooting. *Id*. at 253. Part of that court's reasoning can be found in the following passage:

> The difficulty in identifying probative value in fictional or other forms of artistic self-expressive endeavors is that one cannot presume that, simply because an author has chosen to write about certain topics, he or she has acted in accordance with those views. One would not presume that Bob Marley, who wrote the well-known song "I Shot the Sheriff," actually shot a sheriff, or that Edgar Allan Poe buried a man beneath his floorboards, as depicted in his short story "The Tell–Tale Heart," simply because of their respective artistic endeavors on those

> subjects. Defendant's lyrics should receive no different treatment. In sum, we reject the proposition that probative evidence about a charged offense can be found in an individual's artistic endeavors absent a strong nexus between specific details of the artisticcomposition and the circumstances of the offense for which the evidence is being adduced.

State v. Skinner, 95 A.3d 236, 251-52; 218 N.J. 496, 521 (N.J. 2014).

Applying a 404(b)/403-type analysis, the *Skinne*r Court emphasized: (1) expressive works risk poisoning the jury by suggesting bad character or propensity; (2) such material is admissible only when it directly connects to the specific facts of the offense; (3) courts must weigh whether less prejudicial evidence can make the same point; and (4) even when admissible, careful redaction and limiting instructions are required. *Id*. The NJ Supreme concluded by affirming the Appellate Divisions's reversal and grant of new trial based on the erroneously admitted evidence. *Id*. at 254.

Turning to the case *subjudice*, allowing the counselor to summarize a novel—especially when there was dispute whether Carly even read it—presented expressive, fictional content with no concrete linkage to the charged acts. Like the lyrics in *Skinner*, the plot summary had (at best) minimal probative value on any genuinely disputed material issue and a substantial danger of unfair prejudice: it invited the jury to equate Carly with a "psychopath" protagonist who plans and commits murder, encouraging propensity and moral-condemnation inferences. The State also had less prejudicial avenues to explore treatment or mental-state topics without invoking a 19th-century murder narrative. Under *Skinner's* framework—demanding a strong nexus, careful Rule 403 balancing, consideration of alternatives, and restraint with artistic/expressive works—the trial court's decision to overrule the objection and permit the plot description was an abuse of discretion because it was irrelevant or marginally relevant and "far more prejudicial than probative."

The Mississippi Supreme Court's en banc result in *Jordan v. State*, 212 So.3d 817(Mem) (Miss. 2016)—affirmed by an equally divided court, with Justice King's detailed objection—shows why admitting the counselor's plot summary of Crime and Punishment was an abuse of discretion. Justice King emphasized that courts must exercise rigorous gatekeeping with inflammatory expressive material and exclude it absent a strong nexus to the charged facts; otherwise its unfair prejudice overwhelms any slight probative value (citing *Skinner*), a concern squarely governed by Rules 401/404(b) and the "ultimate filter" of Rule 403. *Jordan* faults the trial court for admitting expressive content without proper foundation or review and for allowing the jury to be exposed to material that stoked propensity inferences—errors present here where the court let a witness recite a lurid plot (psychopathy, hatchet murders, insanity) with no showing Carly actually read the book or that the story bore on a material, disputed issue. See *Jordan* (King, J., objecting), ¶ 11 (404(b) as relevance; 403 as ultimate filter), ¶ 12 (failure to review the exhibit before admitting), ¶¶ 13–16 (authentication/foundation deficiencies), ¶ 17 (Rule 403 balancing standard), ¶ 19 (heightened prejudice from artistic works; reliance on *Skinner*), ¶ 21 (prejudice substantially outweighs probative value), ¶ 23 (abuse of discretion requiring reversal). Mississippi precedent likewise condemns admitting violent lyrics/art where the link to the crime is tenuous: *Brooks v. State*, 903 So. 2d 691, 699–700 (Miss. 2005) (reversing under Rule 403); cf. *State v. Skinner*, 218 N.J. 496, 95 A.3d 236, 238–39 (2014) (fictional expressive works inadmissible absent a strong, specific nexus). Under these authorities, the court should have limited the testimony to non-prejudicial therapy context (e.g., that a title was mentioned) or excluded it; allowing a plot synopsis invited exactly the kind of propensity reasoning *Jordan* and *Brooks* warn against.

Another somewhat analogous case is *U.S. v. Curtin*, 489 F.3d 935 (9th Cir. 2007). In an online-enticement case, the government sought to admit five graphic incest stories found on the defendant's PDA to prove intent, preparation, knowledge, and modus operandi under Rule 404(b). *Curtin*, 489 F.3d at 939-40. Although 404(b) is an inclusionary rule, the Ninth Circuit held that such inflammatory expressive material can be admitted, if at all, only after rigorous Rule 403 balancing—and a trial judge cannot do that without personally reading the proffered writings in full. *Id*. at 957-58. The court faulted the district judge for admitting the stories (some based merely on summaries) despite their extraordinary potential to inflame the jury and invite conviction for "proclivity" rather than charged conduct. *Id.* The opinion emphasized: (1) possession of lawful reading material often is not a "bad act" (citing *Guam v. Shymanovitz*), (2) even when the writings are arguably relevant to intent, courts must demand a strong, specific nexus to a disputed material issue, consider less prejudicial alternatives, and carefully cabin or exclude the material, and (3) limiting instructions do not cure an abuse where the Rule 403 balance was not conscientiously performed. The admission was an abuse of discretion. *Id*. at 959-60.

Like the stories in *Curtin*, the State used expressive, fictional content to suggest propensity—here, having the counselor recount the plot of a novel about a "psychopath" who plans and commits murder—to imply Carly's character or mindset. But there was no strong nexus to any genuinely disputed, material issue (especially given the dispute over whether Carly even read the book), and the court did not undertake the kind of searching Rule 403 screening *Curtin* requires. If anything, this case is even more prejudicial: the jury actually heard the sensational plot summary, which risked moral condemnation by association with a murderous protagonist, when the same therapeutic points (if any) could have been explored through neutral,

less prejudicial testimony about treatment. Under *Curtin's* framework—demanding full judicial review, a precise linkage to intent (not mere propensity), consideration of alternatives, and exclusion when unfair prejudice dominates—the trial court's decision to overrule the objection and allow the literary plot description was an abuse of discretion because it was minimally probative and substantially more prejudicial than probative.

Based on the foregoing authorities, the court's decision to let the counselor summarize the plot of Crime and Punishment (Tr. 1226–29) was an abuse of discretion warranting reversal. Like the inflammatory artistic works condemned in *State v. Skinner*, the book summary had negligible probative value, lacked any strong nexus to the charged acts, merely bolstered the State's narrative despite other, less-prejudicial proof of motive/intent, and carried a substantial risk of "poisoning the jury." *Skinner*, 218 N.J. 496, 516–18, 521–24 (2014). The Ninth Circuit's en banc ruling in *United States v. Curtin* likewise requires trial judges to review and carefully limit or exclude literary material and to bar it when Rule 403 prejudice predominates—gatekeeping that did not occur here. 489 F.3d 935, 958–66 (9th Cir. 2007) (en banc). Mississippi law points the same way: *Brooks v. State* reversed where violent expressive material untethered to the crime slipped in without adequate Rule 403 balancing, 903 So. 2d 691, 699–700 (Miss. 2005), and the *Jordan* en banc writings caution that highly charged rap content with tenuous links to the case is unduly prejudicial and easily misused. *Jordan v. State*, 212 So. 3d 836, 853, 859 (Miss. Ct. App. 2015) (Fair, J., dissenting); see also *id*. at 858–60 (King, J., objecting).

ISSUE X. CUMULATIVE ERROR REQUIRES REVERSAL

Mississippi's cumulative-error doctrine recognizes that "individual errors, not reversible in themselves, may combine with other errors to make up reversible error." *Walker v. State*, 913

So. 2d 198, 249 (¶ 204) (Miss. 2005) (quoting *Weeks v. State*, 804 So.2d 980, 998 (Miss.2001); see also *Ross v. State*, 954 So. 2d 968, 1018 (Miss. 2007) ("[W]here there are several errors, the Court may reverse even if, standing alone, none would warrant reversal."); *Rubenstein v. State*, 941 So. 2d 735, 794 (¶ 271) (Miss. 2006) ("individual errors, not reversible in themselves, may combine with other errors to make up reversible error" where the defendant was deprived of a "fundamentally fair and impartial trial"). The question is not whether any single misstep was independently outcome-determinative, but whether the aggregate effect "so infected the proceedings with unfairness as to deny due process." *Walker*, 913 So. 2d at 216. This record presents multiple, interacting errors that cumulatively undermined both the reliability of sentencing and the fairness of the trial:

This case was tainted by compounding errors that together denied Carly a fair, lawful sentencing. First, the court misread Miss. Code Ann. § 97-3-21(2) by letting the jury toggle "with/without parole" on Count I and effectively authorize LWOP on Count II—an option the statute withholds for first-degree murder juveniles and that *Graham* categorically bars for attempted murder. Second, the court skipped a *Miller*-compliant hearing and pivoted to on-the-spot sentencing with no notice, PSI, expert or lay mitigation, denying the individualized Eighth- and Fourteenth-Amendment process *Miller/Montgomer*y require. Third, the prosecutor's summation injected forbidden parole speculation and fear-mongering "golden-rule" appeals, exactly the sort of rhetoric condemned by *Marks, Williams, Hiter, Manning, and Flowers*—prejudice underscored by the jury's note asking "What is life without parole? Years-wise." Fourth, the court's blanket "no continuances" stance bled into substance by compelling psychiatric exams and sweeping record disclosures without the Rule 12.2/17.4 predicates, tilting strategy and chilling defense consulting on a "rocket docket." Fifth, evidentiary

missteps—like allowing a lurid synopsis of Crime and Punishment —added minimally probative, highly prejudicial expressive material while constricting the defense case. Even if any one error might be deemed harmless, their cumulative effect "seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings," warranting reversal—or at minimum vacatur of the sentences and a *Miller*-compliant resentencing with proper notice, a PSI, and full mitigation.

CONCLUSION

Carly Madison Gregg respectfully submits that based on the propositions cited and briefed above, together with any plain error noticed by this Court which has not been specifically raised but may appear to the Court on a full review of the record, the judgment of the trial court and her conviction and sentence(s) should be reversed and rendered or, alternatively, reversed and remanded for a new trial, or, alternatively, remanded for re-sentencing within the guidelines of § 97-3-21(2) respectively, and this matter remanded to the lower court for further proceedings.

Respectfully submitted, this the 9th day of September, 2025.

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CERTIFICATE OF SERVICE

I, James H. Murphy, counsel for the Appellant, hereby certify that I have this day filed by means of the electronic case filing system the foregoing Brief of the Appellant, pursuant to Mississippi Rule of Appellate Procedure 25 by which immediate notification to the all ECF participants in this cause is made:

In addition, the following non-ECF participants are served by first class mail, postage prepaid, on September 9, 2025:

Hon. Judge Dewey Arthur
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Hon. John K. "Bubba" Bramlett, Jr., 20th Circuit Court District Attorney
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SO CERTIFIED, this the 9th day of September, 2025.

/s/ James H. Murphy