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

CARLY MADISON GREGG
Appellant

v.

STATE OF MISSISSIPPI
Appellee

On Appeal from the Circuit Court
of Rankin County, Mississippi

BRIEF OF THE APPELLEE

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ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

Under Mississippi Rule of Appellate Procedure 28(a)(1), governmental parties need not furnish a certificate of interested persons.

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STATEMENT OF THE ISSUES

Guilt-Phase Issues

- I. Did the trial court reversibly err by stating that it “does not continue cases” when Appellant Carly Gregg waived her claim by failing to object or request a continuance and her claim is meritless?
- II. Did the trial court reversibly err by ordering psychiatric evaluations when Gregg waived her claim by failing to raise it in the trial court and the trial court did not abuse its discretion by ordering Gregg to undergo competency and *M’Naghten* evaluations?
- III. Did the trial court abuse its discretion by allowing Rebecca Kirk to summarize the book *Crime and Punishment*, which was discussed during Gregg’s counseling sessions, when Gregg introduced the evidence and Kirk testified about her observations as a lay witness?

Penalty-Phase Issues

- IV. Did the trial court reversibly err by instructing the jury it could sentence Gregg to life imprisonment for first-degree murder when she waived her claim by failing to object and the instruction was a proper statement of the law?
- V. Is Gregg’s life imprisonment sentence for attempted first-degree murder constitutional when she will be eligible for parole from her attempted first-degree murder conviction under Mississippi’s parole statute?
- VI. Did the trial court reversibly err by conducting a sentencing hearing as required by *Miller* when Gregg waived her claim by failing to object and the jury considered the *Miller* factors?
- VII. Did the trial court reversibly err by allowing the State’s closing argument at sentencing when Gregg did not object and the prosecutor’s argument was not so inflammatory as to require the trial court’s *sua sponte* intervention?

VIII. Did the jury properly sentence Gregg to life-without-parole for first-degree murder when evidence was presented on each *Miller* factor?

IX. Can there be cumulative error when no single error was committed in the trial court?

STATEMENT OF ASSIGNMENT

This case has properly been retained by the Mississippi Supreme Court under Mississippi Rule of Appellate Procedure 16.

STATEMENT OF THE CASE

Appellant Carly Gregg murdered her mom, Ashley Smylie, by shooting her three times in the face and head before lying in wait for her stepdad, Heath Smylie, to return home from work. Gregg shot at Heath three times the moment he opened the door to the home, striking him once in the shoulder. Fortunately, Heath survived. Gregg summed her crimes up this way: “I shot my mom three times, and, as soon as my stepdad gets home, I got three shots for him.” Tr. 536, 736, 1428.

I. Procedural History

Gregg was indicted on one count of first-degree murder under Mississippi Code Annotated section 97-3-19(1)(a) for murdering Ashley; one count of attempted first-degree murder under sections 97-1-7(2) and 97-3-19(1)(a) for attempting to murder Heath; and one count of tampering with physical evidence under section 97-9-125(1)(a) for removing and concealing a security camera that was in the kitchen when Gregg murdered Ashley. CP 49–50.

Before trial, the State moved for competency and *M'Naghten*¹ evaluations. CP 109–112. The trial court granted the State's unopposed request and ordered that Gregg undergo an evaluation to determine her competency to stand trial and sanity at the time of the offense. CP 155–158. Even though she did not object or respond, Gregg filed an interlocutory appeal from the trial court's order requiring competency and *M'Naghten* evaluations, CP 263, which this Court denied, CP 376. Dr. Amanda Gugliano evaluated Gregg for competency to stand trial. Competency Hr'g Ex. S-1 (Sealed); Tr. 158–84. The trial court found Gregg competent to stand trial based on Dr. Gugliano's testimony and Gregg's stipulation that she was competent to stand trial. Tr. 154–156.

Gregg filed her Notice of Intent to Rely upon Defense of Insanity, CP 711, and the case proceeded to trial before the Honorable Dewey K. Arthur September 16, 2024, through September 20, 2024. Gregg called child and adolescent psychiatrist Dr. Andrew Clark to prove insanity. Tr. 943–1134. On rebuttal, the State called Gregg's treating mental health nurse practitioner Olivia Leber, Tr. 1156–1200; Gregg's licensed professional counselor Rebecca Kirk, Tr. 1200–71; Dr. Gugliano, Tr. 1271–1334; and forensic psychiatrist Dr. Jason Pickett, Tr. 1334–1478. The jury found Gregg guilty of the first-degree murder of Ashley, the attempted first-degree murder of Heath, and tampering with evidence. CP 1092;

¹ *M'Naghten Case*, 8 Eng. Rep. 718 (1843) (holding that a person is not criminally responsible for an offense if “laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the acts he was doing; or, if he did know it, that he did not know he was doing what was wrong”).

Tr. 1574–75. After a *Miller*² hearing, the jury sentenced Gregg to two life sentences for the first-degree murder of Ashley and the attempted first-degree murder of Heath. CP 1099; Tr. 1595–96. The trial court sentenced Gregg to ten years for the tampering conviction and ordered all three sentences to run concurrently. CP 1128.

The trial court denied Gregg’s post-trial motions. CP 1207–08. Gregg’s appeal followed. CP 1205.

II. Factual Background

A. Pre-Murder History

Gregg was intelligent and did well in school—a fact she boasted about often. Tr. 569, 977–78, 1167, 1217, 1224. One of Gregg’s best friends, B.G.,³ described her as a “genius kid” who did not get in trouble often. Tr. 489. According to him, she “doesn’t do much wrong at all,” and the one time he saw her get in trouble at school, “it was shocking.” Tr. 489. Heath agreed, testifying that although he and Ashley had to discipline Gregg occasionally, “she never really day-to-day got in trouble[.]” Tr. 564–65. And although there were a couple incidents where Gregg got in trouble at school—once for bringing a Swiss Army knife and once for taking

² *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that the Eighth Amendment prohibits “mandatory life without parole for those under the age of 18 at the time of their crimes”).

³ Out of an abundance of caution, the State will use the initials of minor witnesses throughout to protect their privacy.

a picture of a teacher's test answer key—she was well-behaved overall. Tr. 566–68, 569–70.

Ashley was a math teacher at Northwest Rankin High School, the school Gregg attended. Tr. 485–87, 560. Ashley and Gregg were “really close.” Tr. 488, 864. Ashley drove Gregg to and from school every day. Tr. 576. Heath testified that they loved each other “so much” and everything Ashley did “she planned out and around [Gregg].” Tr. 862. Gregg was also close to Heath, and their relationship was “always good.” Tr. 563. They spent a lot of time together and “got along great.” Tr. 563–64.

Gregg began having some behavioral issues during the year before the murder. She started having trouble sleeping in the summer of 2023, so she began taking melatonin at night. Tr. 986–87. She was only supposed to take one but when that did not work, she started taking two. Tr. 986–87. Ashley found out Gregg was taking two, so she began holding the bottle and giving Gregg one pill at bedtime. Tr. 987.

Heath and Ashley knew Gregg had been “dating” a boy at school, and Ashley talked to Gregg about “some of the things going on.” Tr. 570. Gregg had “supposedly ended it” with the boy but Ashley still saw the two of them together at school. Tr. 572. Gregg was not allowed to take her cellphone to her room at bedtime. Tr. 571. But Ashley knew Gregg had “been lying and talking to a guy on Snapchat on a burner phone.” Tr. 1168. In December 2023, Ashley and Heath discovered Gregg was using an old iPod to communicate with friends. Tr. 572.

Gregg reported that she had been doing this for a while before her parents found out about it. Tr. 986.

Sometime in late 2023 or early 2024, Gregg started smoking marijuana through a vape pen “two or three times per week.” Tr. 546, 868, 978, 995, 1043, 1103, 1290. She also disclosed to her friend T.G. that she had tried other drugs as well. Tr. 546.

Gregg reportedly began “cutting” herself when she was about twelve—she would make “superficial cuts on her thighs” on a “fairly regular basis.” Tr. 985. Heath and Ashley found out about it in December 2023. Tr. 986. Gregg told her parents that she was feeling depressed and thought she needed help, so they began taking her to treatment and counseling. Tr. 573, 988. According to Heath, Gregg “was kind of at times depressed or—you know, she’s a teenage girl, maybe emotional” and she “just didn’t seem like she was her normal happy, peppy self. She was just kind of depressed and sitting around more.” Tr. 628.

Olivia Leber, a psychiatric nurse practitioner at an outpatient mental health clinic, began treating Gregg on January 15, 2024. Tr. 1160; State’s Ex. S-19. Gregg denied hearing voices, having any abnormal or psychotic thoughts, or hallucinations or delusions. Tr. 1164–65, 1173. At each of her three visits with Leber, Gregg’s psychomotor function, speech, cognitive abilities, orientation, memory, emotional state, and judgment and insight were all normal. Tr. 1172–73, 1180, 1183–84. Leber diagnosed Gregg with adjustment disorder with mixed anxiety and depressed mood, and major depressive disorder—single episode,

moderate severity. Tr. 1174–75. She started Gregg on a low dose of Zoloft—25 mg daily. Tr. 1169. Leber also referred Gregg to Rebecca Kirk for counseling. Tr. 1169.

Gregg had two telehealth follow-up visits with Leber. At the first, Gregg reported that Zoloft had no impact and denied any side effects, including suicidal or homicidal ideations or hallucinations. Tr. 1177–78. So Leber increased Gregg’s Zoloft dosage to 50 mg daily. Tr. 1180. At her second telehealth follow-up visit on March 12, 2024—one week before the murder—Gregg said the Zoloft was “making her feel like a zombie.” Tr. 1180. Leber switched Gregg to a low, 5 mg daily dose of Lexapro to avoid that “flatness” feeling or taking “away from her personality.” Tr. 1181. Leber instructed Gregg to decrease her Zoloft dosage to 25 mg daily for ten days and then to stop taking it to avoid “discontinuation syndrome.” Tr. 1181.

Gregg saw Rebecca Kirk, a licensed professional counselor, weekly from January through March 18, 2024, for a total of nine visits. Tr. 1200–1201, 1213; Defense Ex. D-21. After the first visit, Kirk met with Gregg alone. Tr. 1214. Gregg denied hearing voices, hallucinating, experiencing memory trouble, or feeling “derealized” or “dissociated.” Tr. 1208. She and Gregg continued to discuss Gregg’s depression and anxiety and the social issues Gregg struggled with because she had “feelings of being different.” Tr. 1223–24. At her appointment on March 13, 2024, Gregg reported that Leber had changed her medication because she was feeling “numb.” Tr. 1233–34.

At Gregg’s last appointment the day before the murder, Kirk said she was “completely normal.” Tr. 1237. She “appeared emotionally stable and she had no

suicidal or homicidal feelings suspected by [Kirk] nor spoken by [Gregg].” Tr. 1242. Gregg did not report any delusions, memory issues, or concentration issues. Tr. 1237–38. And Gregg did not report that the medication change was negatively affecting her. Tr. 1242. Gregg had described “walking on eggshells” when Ashley was around because she was hard on her and she sometimes struggled to handle the pressure, but she never suggested that Ashley was abusive. Tr. 1238–41. When Ashley got angry with Gregg, she might raise her voice or sometimes slam a door and would speak in shorter sentences. Tr. 1238–41. Kirk never saw anything that led her to believe Gregg was a danger or threat. Tr. 1243–45. Kirk testified that the day she found out Gregg killed her mom was “the most shocking day of [her] life.” Tr. 1266.

B. The Crimes

On March 19, 2024, Gregg’s friends B.G. and S.K.R. had grown increasingly concerned about her marijuana use. Tr. 491, 868. S.K.R. testified that Gregg used marijuana “frequently.” Tr. 868. They were also worried because Gregg was using a “burner phone” to text at night when she was not supposed to be using her phone. Tr. 491. B.G. was also troubled because he had previously talked to Gregg about her abusing sleeping pills. Tr. 492. So B.G. and S.K.R. hatched a plan to tell Ashley about Gregg’s concerning behavior after school that day. Tr. 495.

After school let out, S.K.R. distracted Gregg by walking around the school with her while B.G. went to Ashley’s classroom and told her about their concerns. Tr. 495. After he “let [Ashley] know about the drugs” and the “burner phone,” he

emailed her asking her not to confront Gregg that day because he did not want Gregg to know he was the one who told Ashley. Tr. 498–99; State’s Ex. S-3. B.G. testified that Ashley did not seem angry—she just seemed “disappointed.” Tr. 509. But he was worried about how Gregg would react to being confronted because she resorted to “self-harm” when she got in trouble in the past. Tr. 509–10. Gregg and Ashley left school after B.G. told Ashley about Gregg’s recent behavior. Tr. 496.

Ashley and Gregg arrived home from school at 3:54 p.m. State’s Ex. S-9 (Wyze garage footage 1554(A) and 1555(A)). The family had a Wyze security camera mounted in the kitchen that showed Ashley and Gregg entering the home. State’s Ex. S-46 (Wyze kitchen footage 1556(A)). Gregg let the family dogs outside into the backyard while Ashley went straight to Gregg’s bedroom, presumably to search for the vape pens Gregg had been using to smoke marijuana “based on context[.]” Tr. 1412; State’s Ex. S-46 (Wyze kitchen footage 1556(A)). Gregg let the dogs inside and went to her bedroom, where Ashley was still located, for about one minute. State’s Ex. S-46 (Wyze kitchen footage 1557(A)). Gregg returned to the kitchen before going back outside into the backyard with the dogs. State’s Ex. S-46 (Wyze kitchen footage 1558(A) and 1559(A)). While Gregg was outside with the dogs, Ashley entered the kitchen, placed her phone on the kitchen counter, and looked outside into the backyard. Tr. 782; State’s Ex. S-46 (Wyze kitchen footage 1600(A)).

Ashley went back to Gregg’s bedroom for a couple of minutes then walked in the direction of her own bedroom before returning to Gregg’s bedroom. Tr. 782;

State's Ex. S-46 (Wyze kitchen footage 1600(A) and 1601(A)). After spending a few minutes in Gregg's bedroom, Ashley walked back towards her own bedroom carrying "a little black cylinder shaped small object in her hand...maybe a vape pen," and then returned to Gregg's bedroom empty-handed. Tr. 1412; *See* Tr. 782; State's Ex. S-46 (Wyze kitchen footage 1607(A)). Ashley spent a couple more minutes in Gregg's bedroom and then reentered the kitchen carrying what appeared to be vape pen boxes. Tr. 782–83; State's Ex. S-46 (Wyze kitchen footage 1610(A)). Ashley looked outside into the backyard again and then went back to Gregg's bedroom for the final time. Tr. 782–83; State's Ex. S-46 (Wyze kitchen footage 1610(A)). Investigators later recovered four vape pen boxes from Ashley's bedroom. Tr. 695; State's Exs. S-24, S-45.

Ashley was still in Gregg's bedroom when Gregg reentered the home about thirteen minutes after she went outside with the dogs. State's Ex. S-46 (Wyze kitchen footage 1613(A)). Gregg hesitated in the doorway separating the kitchen from the rest of the house before briefly disappearing in the direction of her bedroom. Tr. 777; State's Ex. S-46 (Wyze kitchen footage 1613(A)). Gregg then went to her parents' bedroom. Tr. 777; State's Ex. S-46 (Wyze kitchen footage 1613(A)). When Gregg returned to the kitchen, she peeked around the doorway into the kitchen while concealing something behind her back. Tr. 778; State's Ex. S-46 (Wyze kitchen footage 1614(A)). Gregg walked towards her bedroom while still concealing something from the camera and ten seconds later, at 4:14 p.m., a gunshot rang out. Tr. 778; State's Ex. S-46 (Wyze kitchen footage 1614(A)). After

the first gunshot, Ashley screamed before a second shot was fired. Tr. 778; State's Ex. S-46 (Wyze kitchen footage 1614(A)). Five seconds later, a third and final gunshot was fired. Tr. 778; State's Ex. S-46 (Wyze kitchen footage 1614(A)).

Gregg calmly returned to the kitchen after shooting Ashley three times, still concealing an object behind her back. Tr. 778–79; State's Ex. S-46 (Wyze kitchen footage 1614(A)). Gregg set the object down behind her, picked up Ashley's phone from the kitchen counter, and texted Heath from Ashley's phone. Tr. 580–82, 778–80; State's Ex. S-46 (Wyze kitchen footage 1614(A) and 1615(A)); State's Ex. S-8. Heath testified that he immediately wondered if Gregg had texted him from Ashley's phone because the way she phrased the message—"Are you almost home, honey?"—was different from the language Ashley typically used. Tr. 581–82; State's Ex. S-8. After singing and humming to the dogs, Gregg picked up the object and returned to her bedroom for over three minutes. Tr. 780; State's Ex. S-46 (Wyze kitchen footage 1615(A), 1616(A), 1617(A), 1618(A)). Gregg then removed the Wyze security camera from the kitchen, hid it in the refrigerator, and waited for Heath to come home from work. Tr. 536, 606–09, 706–07, 1420–21.

After murdering Ashley, Gregg went on a texting and calling spree—reaching out to at least four friends to ask them to come over. B.G. testified that shortly after 4:00 p.m., Gregg FaceTime called him and "seemed upset." Tr. 496. He told Gregg not to harm herself or anyone else and she responded that "it was too late." Tr. 496. Gregg asked B.G. to come to her house, and he said he would. Tr. 499. Before he could go to Gregg's house, she texted him, "I need help," and

asked him to “[c]ome quick please.” Tr. 502; State’s Ex. S-4. It took B.G. a while to ride his bike to Gregg’s house and by the time he arrived, patrol cars were already on the scene. Tr. 503.

Gregg’s friend T.G. testified that Gregg also reached out to him for help. When Gregg FaceTime called him, she was “on the verge of tears” and told him “she fucked up.” Tr. 549. When he asked Gregg what happened, she said she could not tell him. Tr. 549. She hung up after he told her he could not come over. Tr. 549. T.G. was worried so he texted Gregg and asked if he could do anything to help, but she would not tell him what happened and said he could not help unless he could come to her house. Tr. 552; State’s Ex. S-6. He was worried Gregg would hurt herself or do something she should not do, so he said he would call 911. Tr. 552. But Gregg told him, “You can’t do that.” Tr. 552–57; State’s Ex. S-6.

Gregg also texted S.K.R. telling her she needed help and asking her to come over. Tr. 872–73. S.K.R. could not come over and asked Gregg what happened, but Gregg said, “Can’t tell you” but “I’m not going to kill myself or anything. I love you man. You’re my best friend.” Tr. 874; State’s Ex. S-56.

Finally, Gregg called her friend B.W., who testified that Gregg seemed “jittery, scared, secretive maybe.” Tr. 528. Gregg told B.W. that she needed to come over. Tr. 528. She followed the call up with texts asking B.W. if she could come over and telling her, “I NEED HELP” and “PLEASE.” State’s Ex. S-5; Tr. 529–30. B.W.’s dad dropped her off at Gregg’s house and Gregg let her inside. Tr. 531–32. Gregg told B.W. not to “freak out” and asked, “[h]ave you ever seen a dead

body, or, does it make you squeamish, I guess[?]" Tr. 534. Gregg told her, "My mom's in there if you want to go look." Tr. 534. So B.W. looked into Gregg's bedroom where Ashley was lying with her arms crossed and a towel covering her head. Tr. 534. Gregg admitted that she shot her mom three times in the head and "had three more shots waiting for [Heath] when he [came] home." Tr. 535–36. B.W. testified that Gregg was carrying around a revolver while she was at her house. Tr. 535. Gregg told B.W. there were cameras in the house, but that she took them down before B.W. arrived. Tr. 536.

Gregg asked B.W. if she wanted to wait outside "while she took care of her stepdad," so she went outside. Tr. 536. B.W. was playing with the dogs in the backyard when Heath got home at 5:03 p.m. Tr. 537; State's Ex. S-9 (Wyze garage footage 1703(A)). As soon as Heath opened the door that led from the garage to the kitchen, "the gun went off in my face before the door was, I don't know, three or four inches wide open. And everything kind of—kind of went pretty fast from there. It was a blur." Tr. 587; State's Ex. S-9 (Wyze garage footage 1705(A)). B.W. testified that she heard three gunshots come from inside the house. Tr. 537. Heath twisted the gun away from Gregg, who fled after he took the gun from her. Tr. 537, 594. According to B.W., Gregg ran outside and gestured for B.W. to run. Tr. 537. They hopped the backyard fence and B.W. ran to her friend's house across the street while Gregg ran in the other direction. Tr. 537.

The first shot hit Heath's upper shoulder, but the other two missed. Tr. 590. The gun was a .357 magnum Taurus revolver Ashley kept on her side of the bed.

Tr. 592. Heath opened the cylinder of the revolver and knew that six shots had been fired because the gun held seven rounds and only one was left in the cylinder. Tr. 596. After Gregg fled, Heath took the gun with him as he walked through the house. Tr. 594–96. Heath discovered Ashley’s body in Gregg’s bedroom lying on her back with her hands folded and “a towel over her face.” Tr. 597–98. When he checked for a pulse and removed the towel, he saw that she had been shot in the face. Tr. 598. Heath called 911 and reported that Gregg had shot him and killed Ashley. Tr. 598; State’s Ex. S-1. Heath was taken by ambulance to the emergency room, treated for a through-and-through gunshot wound, and released that night. Tr. 599–601.

After receiving Heath’s 911 call, Rankin County Sheriff’s Office (“RCSO”) dispatcher Kevin Colins released Gregg’s description to officers. Tr. 460. While officers were searching for Gregg, RCSO Deputy Hunter Lewis arrived on scene. Tr. 467. The door was locked but he heard Heath screaming from inside the house. Tr. 467–68. When Heath opened the door, he was “hysterical, highly upset, crying” and he fell to the ground on the front porch. Tr. 468. Heath told Deputy Lewis that Ashley was dead inside. Tr. 468. Deputy Lewis entered Gregg’s bedroom and found Ashley on the floor with a towel covering her face. Tr. 469; State’s Ex. S-2. Deputy Lewis checked for a pulse but could not find one, and when he lifted the towel, he saw that she had been shot in the face. Tr. 469; State’s Ex. S-2. He returned to the porch with Heath and called for medics. Tr. 469–470; State’s Ex.

S-2. Heath provided a description of Gregg and told Deputy Lewis that the gun was on the counter in the kitchen with a live round in the cylinder. Tr. 471.

When RCSO Investigator Tyler Burnell arrived on scene, Gregg had not yet been apprehended. Tr. 680–81. Investigator Burnell saw three gunshot wounds to Ashley’s face and head. Tr. 730; State’s Ex. S-37. Two shots were from a distance, but the shot under Ashley’s chin showed stippling, indicating a close contact gunshot wound. Tr. 731. Investigator Burnell testified that it appeared Ashley had been lying face up on the floor when the third shot struck her. Tr. 732.

Investigator Burnell photographed the crime scene, inside and out, to document and preserve the scene. Tr. 682; State Exs. S-12–S-37. Officers collected projectiles and the murder weapon from the scene. Tr. 710–13, 715–16; State’s Exs. S-38–S-40. While Investigator Burnell was processing the scene, Gregg was located nearby and taken into custody by Deputy Tony Shack. Tr. 721–22; Ex. D-7. Deputy Shack testified that Gregg never asked about Ashley but asked, “Is my stepdad okay?” Tr. 900. Law enforcement swabbed Gregg’s hands for gunshot residue, and both hands tested positive for gunshot residue particles. Tr. 722, 726–27, 818–19; State’s Exs. S-43, S-51.

Investigator Zach Cotton obtained a buccal swab from Gregg. Tr. 793; State’s Exs. S-48–S-49. DNA from the revolver’s trigger produced a partial profile that was consistent with Gregg’s DNA sample. Tr. 829–30; State’s Ex. S-53. Ashley was excluded as a match to the trigger profile. Tr. 829–30; State’s Ex. S-

53. Projectiles recovered during Ashley's autopsy were fired from the Taurus revolver. Tr. 797–98, 841–42; State's Exs. S-41–S-42, S-54.

Investigators could not locate the Wyze kitchen camera during two searches of the home. Tr. 738. But Heath later found the camera in the refrigerator behind some water bottles and turned it over to the RCSO. Tr. 606.

The day after Gregg was arrested, the Rankin County County Court appointed Public Defender Kevin Stewart to represent Gregg. *State v. Gregg*, No. 24-cr-15875 (Doc. 16). Six days later, the County Court approved Gregg's motion to substitute Stewart with Kevin Camp and Bridgett Todd, who represented Gregg throughout the remainder of the trial court proceedings. *State v. Gregg*, No. 24-cr-15875 (Doc. 30).

C. Insanity Defense

At trial, Gregg tried to prove she was legally insane when she killed Ashley and attempted to kill Heath. Her defense boiled down to this: She was also a victim and suffered from a mental illness that neither she, her parents, nor her friends knew about. Tr. 448–49. This mental illness, she claimed, rendered her legally insane when she killed Ashley and tried to kill Heath. Tr. 1543–44. The jury rejected Gregg's insanity defense, finding her guilty on all three counts in the indictment. CP 1092; Tr. 1574–75.

Dr. Andrew Clark

Gregg called psychiatrist Dr. Andrew Clark as an expert in child and adolescent psychiatry. Tr. 943–1134. Dr. Clark reviewed Gregg's medical records,

Defense Exs. D-12–D-13, the police reports, and Gregg’s journal entries and sketchbook, Defense Ex. D-11, before interviewing Gregg for about four hours. Tr. 964–66. He also interviewed Heath for about ninety minutes. Tr. 966.

Dr. Clark thought Gregg was “struggling with a significant mood disorder.” Tr. 997. He did not think she had classic bipolar disorder, but “hypomania,” a milder form of mania. Tr. 999. As a result, he diagnosed her with Bipolar II disorder, which involves episodes of depression and hypomania. Tr. 1000–01. According to him, antidepressants can worsen Bipolar II by inducing mania. Tr. 1000. Dr. Clark admitted that none of Gregg’s medical providers—who saw her weekly—diagnosed her with Bipolar II. Tr. 1118. He also admitted that Gregg did not report extended hypomanic states until his evaluation six months after the murder. Tr. 1119.

Gregg told Dr. Clark that she woke up the day of the murder feeling “grumpy,” “irritable,” and she “couldn’t pay attention in school,” which “was the first time that had ever happened.” Tr. 997, 1042–43. She said that after school Ashley confronted her about smoking marijuana. Tr. 1043. According to Gregg, after letting the dogs outside, “her memory went blank,” and her next memory was standing by the roadside after crawling “out of a drainage pipe,” where a police officer found her. Tr. 1043. She claimed to have no memory of the events between. Tr. 1043.

Dr. Clark opined that Gregg had (1) Bipolar II disorder; (2) significant depressive disorder worsened by Lexapro; (3) auditory hallucinations (“other

specified schizophrenia spectrum and related psychotic disorders”); and (4) chronic, low-grade dissociative symptoms supporting a diagnosis of “unspecified dissociative disorder.” Tr. 1045–48. He theorized that the day of the murder, Gregg suffered “a mental health crisis” marked by worsening mood swings, increasingly intrusive voices, dissociation, and difficulty concentrating, aggravated by stress from Ashley discovering her marijuana use. Tr. 1049–50. Dr. Clark described this as an “acute dissociative reaction” triggered by significant stress. Tr. 1050.

Dr. Clark did not believe that Gregg “panicked” or acted out of callousness. Tr. 1054–55. He testified that although Gregg now understands she killed Ashley, she does not remember doing it. Tr. 1056–57. He opined that Gregg could not distinguish right from wrong at the time. Tr. 1058. He doubled down on his opinion despite evidence that Gregg: (1) hid the gun behind her back when in view of the kitchen camera; (2) peeked around the wall to look for her mom; (3) removed and hid the kitchen security camera; (4) called and texted multiple friends for help but avoided admitting what she had done; (5) told T.G. not to call the police; (6) told B.G. it was “too late” when he told her not to hurt herself or anyone else; and (7) fled from the scene. Tr. 1120–23. Dr. Clark conceded that these actions “would seem to indicate” some appreciation of right and wrong. Tr. 1120–21.

Dr. Amanda Gugliano

Dr. Amanda Gugliano, a forensic psychologist at the Mississippi State Hospital, was ordered to evaluate Gregg for competence to stand trial and for legal

insanity under the *M’Naghten* standard. Tr. 1282. Dr. Gugliano interviewed Gregg for several hours. Tr. 1289. She determined Gregg was competent to stand trial, Tr. 1305–06, but she ended her evaluation when Gregg mentioned her psychiatric medications. Tr. 1323. Dr. Gugliano recommended that a “forensic psychiatrist do the evaluation because [she] could not address whether any side effects or withdrawal symptoms may have been present due to medication since that’s not a specialty area of [hers].” Tr. 1323–24.

Dr. Jason Pickett

Dr. Jason Pickett, a board-certified psychiatrist, forensic psychiatrist, and emergency physician, evaluated Gregg under the *M’Naghten* standard and testified for the State on rebuttal. Tr. 1334–1478. Dr. Pickett explained that someone must be diagnosed with a mental illness first before being evaluated as to whether they understood the nature and quality of what they were doing at the time of the offense. Tr. 1341–42. Under *M’Naghten*, the question is whether they understood the wrongfulness of what they were doing. Tr. 1341–42. The “nature” prong asks whether the person knew what they were doing—a low bar—while the “understands” prong is whether the person understood that what they were doing was illegal. Tr. 1343–44.

Dr. Pickett disagreed with Dr. Clark’s Bipolar II diagnosis, noting Gregg’s mental health records did not mention manic episodes or anything consistent with bipolar disorder. Tr. 1379–81. He also rejected Dr. Clark’s assessment that Lexapro contributed to the murder. Tr. 1391. Gregg took a very low dose of

Lexapro for only seven days before killing Ashley and, according to him, it does not “make sense” that this “pushed her into a state where she could not understand the nature, quality, and wrongfulness of her actions.” Tr. 1391–92. Dr. Pickett testified that Gregg’s actions in the security footage, Tr. 1411–22, her text messages, Tr. 1422–26, and statements to B.W., Tr. 1426–28, showed that she had specific intent to kill Ashley and knew right from wrong. Tr. 1411.

Dr. Pickett summarized Gregg’s actions in the Wyze security footage and how those actions demonstrated that she knew right from wrong when she killed Ashley. Tr. 1411–22. For example, after returning from the backyard, Gregg paused as if thinking, then walked slowly toward her bedroom before moving “quickly, briskly” toward Ashley and Heath’s bedroom. Tr. 1413. Dr. Pickett testified this showed “intact memory,” “intact motor function,” coordination, and “specific intent” given that Gregg walked “purposefully” toward the gun. Tr. 1413. That Gregg returned to the kitchen and peeked “around the corner and she’s hiding something—concealing something behind her back,” was even more “convincing” to Dr. Pickett that she possessed specific intent. Tr. 1414. Since Gregg did not know Ashley’s location, she peeked around the corner “in a very methodical manner” with the object hidden showing “spatial awareness.” Tr. 1414. Dr. Pickett characterized this behavior as “almost predatory,” “intentional,” and not “accidental,” “dissociative,” or “psychotic.” Tr. 1415.

Dr. Pickett also found that Gregg’s concealment of the gun behind her back showed that she understood her actions were wrong. Tr. 1415. He would not

expect someone to do this “unless they were intentionally trying to conceal or avoid detection from the surveillance camera,” which “suggests strongly that she appreciated the nature, quality and wrongfulness of what she was doing at that time.” Tr. 1415.

After killing Ashley, Gregg returned to the kitchen and entered Ashley’s passcode to unlock her phone. Tr. 1416. That showed Dr. Pickett that she had “some degree of intact memory, hand-eye coordination, and that was calculated and specific.” Tr. 1416. And when Gregg texted Heath from Ashley’s phone—“You almost home, honey?”—it showed she had a “specific target” rather than acting in a “disorganized, confused, psychotic manner” Tr. 1416–17. Dr. Pickett called this “diabolical” and inconsistent with a dissociative spell, psychosis, mania, or hypomania. Tr. 1417–18. By using Ashley’s phone rather than her own to avoid raising alarm, Gregg showed “deceitful” behavior suggesting “specific intent” and that she “understood the nature, the quality of what she was doing, and I would suggest even the wrongfulness.” Tr. 1418.

Among other things, Dr. Pickett cited several actions showing Gregg was not disorganized and understood the nature and quality of her actions: (1) shooting her mom three times in the face, Tr. 1416; (2) humming to the dogs afterward, Tr. 1419; (3) yelling “Heath? Heath? Heath?” when the dogs barked to ascertain whether he had arrived home, Tr. 1420; and (4) telling the dogs “It’s okay. It’s okay” and whistling, Tr. 1422. And Gregg’s removal and concealment of the security camera “strongly suggests somebody who is trying to hide evidence

and avoid detection because they appreciate the wrongfulness of what they are doing.” Tr. 1421.

Dr. Pickett explained that Gregg’s post-killing text messages showed she understood her actions and their wrongfulness. Tr. 1422–26. She texted several friends for help, showing “she understood the situation to some degree,” but knew not to reveal what she had over the phone. Tr. 1422, 1424–25. She even told T.G. “I fucked up” and told him not to call the police. Tr. 1425–26.

Finally, Gregg’s interactions with B.W. further showed this understanding. Tr. 1427–28. Gregg asked B.W. whether she was “squeamish around dead bodies,” showing awareness of “how [B.W.] might feel,” and disclosed removing cameras to avoid detection. Tr. 1427. Her statement—“I put three in my mom and I’ve got three more waiting for my stepdad when he gets home”—“strongly suggest[s]” she understood “the nature, quality and wrongfulness of what she had done.” Tr. 1428.

Dr. Pickett ultimately diagnosed Gregg with (1) adjustment disorder with mixed anxiety and depressed mood, and a single major depressive episode, Tr. 1429–30; (2) generalized anxiety disorder, Tr. 1429–31; and (3) “Cluster B” traits, which include traits associated with “borderline personality, antisocial personality, narcissistic personality, and histrionic personality.” Tr. 1431–35. No matter Gregg’s diagnosis, Dr. Pickett’s opinion was that she did not meet the *M’Naghten* standard for insanity because all her actions “strongly demonstrate that she understood the nature, quality, and wrongfulness of her actions on that day.” Tr. 1441.

SUMMARY OF THE ARGUMENT

Every aspect of Gregg's trial was fair. Her claims result from her misunderstanding of the Mississippi Rules of Criminal Procedure, this Court's precedent, and the trial court's orders and rulings. But the trial court did not commit reversible error during either the guilt phase or the penalty phase of Gregg's trial. This Court should therefore affirm her convictions and sentences.

During the guilt phase, the trial court did not abuse its discretion by informing the parties that it "does not continue cases." Gregg never moved for a continuance, so the trial court never ruled on a motion to continue. Her claim is waived and meritless. Gregg also waived her claim that the trial court abused its discretion by ordering her to undergo psychiatric evaluations. Even so, the trial court's order requiring psychiatric evaluations was based on reasonable grounds and was consistent with the applicable Mississippi Rules of Criminal Procedure. Finally, the trial court did not abuse its discretion by allowing Rebecca Kirk to summarize the book *Crime and Punishment*. Kirk's testimony was properly admitted as lay witness testimony about her observation and treatment of Gregg at the time of her counseling sessions and gave context to the treatment notes Gregg introduced into evidence.

At sentencing, the trial court followed the procedure set forth by the U.S. Supreme Court in *Miller* and its progeny and by the Mississippi Legislature in sections 97-3-21 and 47-7-3. The jury was properly instructed on the sentencing options and the *Miller* factors, and the record contains substantial evidence on

each *Miller* factor. The jury therefore took “into account” and “considered” each *Miller* factor in sentencing Gregg to life-without-parole for first-degree murder. And the trial court did not abuse its discretion by allowing the State’s closing argument when the State’s comments were not so inflammatory that they required the trial court’s *sua sponte* intervention.

ARGUMENT

On appeal, Gregg asserts three guilt-phase claims and five penalty-phase claims, plus cumulative error. All Gregg’s claims lack merit. The State begins with Gregg’s guilt-phase claims.

Guilt-Phase Claims

I. Gregg’s claim that the trial court committed reversible error by “prospectively” denying any requests for continuance is waived and meritless.

Gregg claims on appeal that the trial court reversibly erred by “prospectively denying any requests for continuance.” Appellant’s Br. 49–51. But, by her own admission, Gregg failed to object to any alleged “prospective” denial of a request for continuance. Appellant’s Br. 50. This Court’s “contemporaneous objection rule is so well established that it bears no lengthy discussion[.]” *Thomas v. State*, 517 So. 2d 1285, 1286 (Miss. 1987). “This Court has repeatedly held that ‘if no contemporaneous objection is made, the error, if any, is waived.’” *Thorson v. State*, 895 So. 2d 85, 112 (Miss. 2004) (quoting *Foster v. State*, 639 So. 2d 1263, 1270 (Miss. 1994) (cleaned up)). Not only did Gregg fail to object, but she also never moved for a continuance. Gregg therefore waived this claim and is

procedurally barred from challenging this issue on appeal. *See Stewart v. State*, 367 So. 3d 985, 987 (Miss. 2023).

Acknowledging that she waived this claim, Gregg argues that the trial court committed plain error by implementing a “blanket no-continuances stance at trial.” Appellant’s Br. 50. Not so. The plain-error doctrine allows this Court to “recognize obvious error which was not properly raised by the defendant and which affects a defendant’s ‘fundamental, substantive right.’” *Id.* at 988 (quoting *Shinstock v. State*, 220 So. 3d 967, 970 (Miss. 2017)). Under the plain-error doctrine, the Court must determine “(1) whether the trial court deviated from a legal rule; (2) whether the error is plain, clear, or obvious; and (3) whether the error prejudiced the outcome of the trial.” *Id.* (quotation omitted).

Most important, Gregg has identified no “legal rule” that the trial court deviated from. That alone is fatal to her argument. Gregg’s argument that the trial court committed reversible error by “prospectively denying any requests for continuance” is based entirely on the trial court’s statement that it “does not continue cases.” Tr. 72; Appellant’s Br. 49–51. True, the trial court warned the parties that it “does not continue cases” while instructing them to submit necessary orders “immediately.” Tr. 72. Far from identifying how the trial court’s statement marked a deviation from a “legal rule,” Gregg instead ignores a bedrock principle established by this Court’s precedent: “The trial court has the inherent right, independent of statute, to control its docket and is accorded reasonable latitude with respect to the setting, disposition and continuance of cases.” *Liberty*

Sav. & Loan Ass'n v. Mitchell, 398 So. 2d 208, 210 (Miss. 1981). That's because a trial court "has the authority and indeed a duty to maintain control of the docket and ensure the efficient disposal of court business." *Venton v. Beckham*, 845 So. 2d 676, 684 (Miss. 2003).

What's more, the trial court never said it would deny any request for a continuance; it simply warned the parties that it "does not continue cases." Tr. 72. Gregg attempts to stretch the trial court's statement into something it is not—a "blanket" "prospective[] denial of any requests for continuance." Appellant's Br. 49–51. But she never requested a continuance, so it is unknown whether the trial court would have denied such a request. In other words, Gregg cannot claim, in her own words, a "prospective" error the trial court *may* have committed had she actually requested a continuance. *See Pitchford v. State*, 45 So. 3d 216, 232 (Miss. 2010) (rejecting petitioner's claim that the trial court erred by failing to continue trial when he did not request a continuance because the trial court "cannot be held to err on an issue not presented to it for decision"). With no continuance motion before it, the trial court's words can only be viewed as a warning to the parties about dilatoriness.

Gregg's claim is waived. Waiver notwithstanding, she failed to show that the trial court committed "plain error." This Court should affirm Gregg's convictions.

II. Gregg’s claim that the trial court abused its discretion by ordering her to undergo psychiatric evaluations is waived and meritless.

Gregg’s argument that the trial court abused its discretion by ordering her to undergo psychiatric evaluations as to her competency to stand trial and *M’Naghten* insanity is rooted in her selective reading of the Mississippi Rules of Criminal Procedure, precedent, and the trial court’s orders. Appellant’s Br. 51–58. And she waived this claim by failing to raise it in the trial court. The trial court’s order requiring psychiatric evaluations was based on reasonable grounds, was consistent with applicable Rules and precedent, and was necessitated by Gregg’s indication that she was suffering from a “fragile mental state” as early as April 2024—five months before trial. CP 441–42.

To start, Mississippi Rule of Criminal Procedure 16.1 states that at arraignment or thereafter, the trial court “may set a reasonable deadline for filing and hearing of all pretrial motions,” which “shall include” motions “for mental examination.” MRCrP 16.1. Rule 16.1 makes sense because this Court has held that a trial court “has the authority and indeed a duty to maintain control of the docket and ensure the efficient disposal of court business.” *Venton*, 845 So. 2d at 684. The trial court exercised the discretion afforded to it by Rule 16.1 to set deadlines equally applicable to Gregg and the State for expert designations and mental evaluations. CP 155–58, 261–62.

The trial court likewise did not abuse its discretion by ordering Gregg to undergo a competency evaluation under Mississippi Rule of Criminal Procedure 12.2(a) or a *M’Naghten* evaluation.

A. The trial court did not abuse its discretion by ordering a competency evaluation.

Gregg waived her claim that the trial court abused its discretion by ordering her to undergo a competency evaluation by failing to object in the trial court. As this Court consistently holds, “if no contemporaneous objection is made, the error, if any, is waived.” *Thorson*, 895 So. 2d at 112 (quotation omitted). The trial court “cannot be held to err on an issue not presented to it for decision.” *Pitchford*, 45 So. 3d at 232. As a result, Gregg waived this claim on appeal.

Waiver notwithstanding, Gregg makes no serious attempt to show that the trial court abused its discretion by ordering her to undergo a competency evaluation—presumably because she cannot. Rule 12.2(a) dictates that if “the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent, the court shall order the defendant to submit to a mental examination.” MRCrP 12.2(a). On appellate review, “the pertinent question is whether ‘the trial judge received information which, objectively considered, should reasonably have raised a doubt about the defendant’s competence and alerted the judge to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense.’” *Robinson v. State*, 301 So. 3d 577, 580

(Miss. 2020) (quoting *Moore v. State*, 287 So. 3d 189, 196 (Miss. 2020)). And what “constitutes a ‘reasonable ground’ rests largely within the discretion of the trial judge.” *Id.* (cleaned up).

The trial court did not abuse its discretion here. On the contrary, it had a duty to (“shall”) order a mental evaluation because it had “reasonable grounds” to believe that Gregg could have been incompetent to stand trial. The day after the murder, Gregg filed a Motion for Assessment and Evaluation requesting a “mental health evaluation.” CP 398. At her bond hearing, Gregg disclosed that she was “undergoing psychiatric treatment” and had retained two mental health experts. Tr. 68–70. And Gregg specifically argued at her preliminary hearing that her “fitness to stand trial will be at risk by the time we get to trial.” CP 441–42. These examples, *inter alia*, demonstrate that the trial court had “reasonable grounds to believe that [Gregg was] mentally incompetent,” so it fulfilled its obligation under the Rules to order a competency evaluation. It therefore did not abuse its discretion.

B. The trial court did not abuse its discretion by ordering a *M’Naghten* examination.

Gregg waived her argument that the trial court abused its discretion by ordering her to undergo a *M’Naghten* evaluation by failing to raise an objection in the trial court. “This Court has repeatedly held that ‘if no contemporaneous objection is made, the error, if any, is waived.’” *Thorson*, 895 So. 2d at 112 (quotation omitted). The trial court “cannot be held to err on an issue not

presented to it for decision.” *Pitchford*, 45 So. 3d at 232. Not only did Gregg fail to object to the trial court’s order of a *M’Naghten* evaluation, but she also supported it.

As early as April 18, 2024, Gregg expressed her intent to rely on an insanity defense. Irrespective of whether the County Court of Rankin County had jurisdiction to order a *M’Naghten* evaluation pre-indictment, defense counsel agreed to the County Court’s entry of the Supplemental Order for *M’Naghten* Analysis. CP 465–66. The mental evaluation was “to include an investigation and analysis of [Gregg’s] mental condition at the time of the alleged offense(s) with respect to [Gregg’s] ability to know the nature and quality of [her] alleged acts and to know the difference between right and wrong in relation to [her] alleged acts at that time, in accordance with [MRCrP 12.2(b)].” CP 465.

Then, at a bond hearing on June 4, 2024, in Circuit Court, the trial court asked defense counsel whether Gregg intended to raise a *M’Naghten* defense, to which he responded, “Yes.” Tr. 75. Defense counsel disclosed that Gregg’s intent to raise an insanity defense was the reason they already hired two mental health experts to evaluate Gregg. Tr. 74–75. Far from objecting to the State’s request that she undergo a *M’Naghten* analysis, Gregg argued only that she was entitled to have her own experts evaluate her *before* the State’s experts evaluated her. Tr. 76–77, 79–80. In fact, Gregg wanted her experts to evaluate her “as quickly as possible.” Tr. 79. In response to Gregg’s request, the trial court noted “if Miss Gregg had a *M’Naghten* issue, she’s entitled to put that forward,” but the trial

court “wants to get the mental evaluation rolling forward. If she’s going to be mentally evaluated, she needs to be mentally evaluated. She ought to know whether or not she has that as an available defense to her.” Tr. 81–82. So Gregg not only failed to object to the State subjecting her to a *M’Naghten* insanity evaluation, but she supported the trial court’s order.

After the bond hearing, the State filed its Motion for Mental Evaluation and *M’Naghten* Analysis formalizing its request to have Gregg evaluated under *M’Naghten*. CP 109–12. Gregg did not object or otherwise respond to the State’s motion. At the hearing on the State’s motion, the trial court asked defense counsel whether Gregg objected to the State’s motion for *M’Naghten* analysis. CP 585. Defense counsel stated “No, Your Honor, there’s not an objection.” CP 585. Instead, defense counsel “just wanted to make sure ... the State’s mental health evaluation would occur after Dr. Webb has finished his mental health evaluation” CP 585–86, 591–92.

At that point, Gregg had not yet served a Rule 17.4(b) notice of intent to assert an insanity defense. So, Rule 12.2(b) governing mental examinations after a Rule 17.4(b) notice did not apply. Instead, the trial court granted—and Gregg acquiesced to—the State’s unopposed motion for its experts to conduct a *M’Naghten* analysis. CP 155–58.⁴ The trial court had the authority under

⁴ Curiously, Gregg filed a Petition for Permission to File Interlocutory Appeal in this Court challenging the trial court’s order granting the State’s unopposed motion for its experts to conduct a *M’Naghten* analysis. Petition, *Gregg v. State*, No. 2024-M-00834-SCT (Miss. July 22, 2024). This Court denied the Petition. Order, *Gregg v. State*, No. 2024-M-00834-SCT (Miss. Aug. 6, 2024); CP 376.

Mississippi Rule of Criminal Procedure 12.3 to “appoint a competent psychiatrist and/or psychologist to examine the defendant and, if necessary, to testify regarding the defendant’s mental condition.” MRCrP 12.3(a). The trial court had reasonable grounds to grant the State’s motion and appoint experts to examine Gregg because Gregg did not object to the motion, said she did not object to the motion, and said she intended to assert an insanity defense.

In any event, Gregg’s argument that the trial court abused its discretion by ordering a *M’Naghten* evaluation *before* she filed a formal notice that she intended to put on an insanity defense under Rule 17.4(b) is disingenuous. Rule 12.3 gives the trial court the authority to appoint a psychologist or psychiatrist “if reasonable grounds exist,” regardless of whether a defendant has filed a Rule 17.4(b) notice. It would have had a chilling effect on this case, and any other criminal case, if, under Rule 12.2(b), the trial court could not have ordered a *M’Naghten* evaluation until she filed her Rule 17.4(b) notice just ten days before trial. In other words, Gregg could wait until ten days before trial, file a Rule 17.4(b) notice, and then ask the trial court to order a *M’Naghten* evaluation—which would have inevitably delayed the trial by months. And this was *after* she claimed that remaining in jail before trial would put her “fitness to stand trial ... at risk[.]” CP 441–42.

To curb such gamesmanship, Rule 17.4(b) permits the trial court to order a defendant to serve a 17.4(b) sooner than ten days before trial, which the trial court did here. “If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, the defendant shall, within the time provided for filing

pretrial motions or at such later time as the court may direct,” serve her intent to offer an insanity defense upon the State and the Clerk of the Court. MRCrP 17.4(b). Rule 17.4(b) adds that this notice must be served “in no event less than ten (10) days before the trial, *unless the court otherwise directs....*” *Id.* (emphasis added). The trial court expressly ordered Gregg to file a Rule 17.4(b) notice of insanity defense well before ten days before trial. *See, e.g.,* Tr. 96–87.

Gregg’s claim nonetheless became moot when she filed her Notice of Intent to Rely upon Defense of Insanity on August 28, 2024. CP 711. She argues that the trial court erred by ordering a *M’Naghten* evaluation under Rule 12.2(b) because she had not yet filed her Rule 17.4(b) notice. That argument became moot when she filed her Rule 17.4(b), and, as a result, she cannot show prejudice. *See Crawford v. State*, 867 So. 2d 196, 211 (Miss. 2003) (petitioner could not show prejudice where his claim was rendered moot).

Not only do the Mississippi Rules of Criminal Procedure belie Gregg’s claim, but her cries of “unfairness” and “prejudice” ring hollow. Appellant’s Br. 54–58. To start, her reliance on *Estelle v. Smith*, 451 U.S. 454 (1981), is misplaced. Appellant’s Br. 54. The U.S. Supreme Court held in *Estelle* that the admission of a psychiatrist’s testimony violated an unrepresented defendant’s Fifth Amendment privilege against compelled self-incrimination because the defendant was not advised before the examination that he had a right to remain silent and that any statement he made could be used against him at trial. *Estelle*, 451 U.S. at 462–69. Gregg, on the other hand, has been represented throughout all stages

of this litigation. And unlike *Estelle*, Gregg’s defense counsel was physically present with her during all her evaluations and even inappropriately interjected, prompted Gregg, led the questioning, and redirected the conversation. *See* Tr. 1288–89, 1348–49. Thus, the U.S. Supreme Court’s concerns in *Estelle* are absent here.

Gregg next claims that by ordering “a Rule 12.2(b)-type evaluation” before she filed her Rule 17.4(b) notice the trial 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.” Appellant’s Br. 55. Notably absent from this argument is any factual basis for such a bald assertion or any attempt to demonstrate prejudice. Gregg again loses sight of the fact that *she did not object* to the State’s motion for a *M’Naghten* evaluation. She cannot now fault the trial court for ordering an evaluation she acquiesced to. And for the reasons above, the trial court acted within its discretion under Rules 12.2, 12.3, and 16.1 when it granted the State’s unopposed request for a *M’Naghten* evaluation.

Finally, in a last-gasp attempt to breathe life into her meritless claim, Gregg argues that the trial court’s order violated the Mississippi Constitution’s guarantee of “fundamental fairness in criminal proceedings.” Appellant’s Br. 57. For the reasons detailed above, that contention is false. The trial court’s order reflected (1) an appropriate exercise of its discretion to set “reasonable deadlines”

under Rule 16.1, and (2) it had “reasonable grounds” to order competency and *M’Naghten* evaluations under Rule 12.3.

The trial court did not abuse its discretion by ordering Gregg to undergo competency and *M’Naghten* evaluations. This Court should therefore affirm her convictions.

III. The trial court did not abuse its discretion by allowing Rebecca Kirk to summarize the book *Crime and Punishment*.

According to Gregg, the trial court reversibly erred by permitting her counselor, Rebecca Kirk, to summarize the book *Crime and Punishment* over her objection. Appellant’s Br. 59–64. “A trial court’s admission of testimony is reviewed for an abuse of discretion.” *Chaupette v. State*, 136 So. 3d 1041, 1045 (Miss. 2014) (citations omitted). This Court gives “great deference to the discretion of the trial judge” and will not reverse the trial court’s admission of testimony unless it concludes “that the discretion was arbitrary and clearly erroneous.” *Id.* And this Court “may reverse a case only if, the admission or exclusion of evidence results in prejudice and harm or adversely affects a substantial right of a party.” *Id.*

During her case-in-chief, Gregg introduced Kirk’s medical records into evidence to support Dr. Clark’s expert testimony. Tr. 951–52; Defense Ex. D-21. Dr. Clark relied in part on Kirk’s treatment notes in forming his opinion that Gregg was criminally insane under the *M’Naghten* standard. Tr. 983–94. Dr. Clark discussed Kirk’s treatment notes and the impact they had on his expert

opinion. *See, e.g.*, Tr. 983–84, 988–89, 1014. The treatment notes Gregg relied on to establish her defense referenced the book *Crime and Punishment*. Defense Ex. D-21 at 11. So, during its rebuttal, the State questioned Kirk about her treatment notes, including her discussion with Gregg about *Crime and Punishment*, to give context to those notes. Tr. 1226–30.

Kirk testified that at a session on February 21, 2024, she and Gregg discussed that Gregg had been reading *The Castle*. Tr. 1225; Defense Ex. 21 at 11. Gregg told Kirk that she also wanted to read *The Bell Jar* and *Crime and Punishment*. Tr. 1225; Defense Ex. 21 at 11. Kirk testified that at Gregg’s first appointment after Spring Break she reported that she had read *Crime and Punishment* over the break. Tr. 1229–30, 1233; Defense Ex. 21 at 17 (“She finished her reading.”). When the State asked Kirk what *Crime and Punishment* is about, defense counsel objected, arguing that it would be “irrelevant testimony” and would “be prejudicial to the jury.” Tr. 1225–26. The State countered that it “directly goes to [Kirk’s] treatment and her therapy of this client that she saw” and was so important to Kirk “that she underlines it in her medical records.”⁵ Tr. 1226. The trial court overruled defense counsel’s objection but warned the State that “we need to get to the point.” Tr. 1227–28. Kirk then summarized the plot of the book. Tr. 1228–29.

⁵ Upon further questioning, the State elicited that Kirk underlined *Crime and Punishment* for grammatical reasons. Tr. 1228.

As a practical matter, Gregg cannot argue on appeal that evidence was improperly introduced when she was the one who introduced it. *See Thomas v. State*, 249 So. 3d 331, 347 (Miss. 2018) (“It is axiomatic that a defendant cannot complain on appeal of alleged errors invited or induced by himself”) (quotation omitted). Simply stated, “[a]n appellant cannot complain of alleged errors which he invited or induced.” *Wells v. State*, 396 So. 3d 1084, 1086 (Miss. 2024) (quotation omitted). Gregg invited any error stemming from Kirk’s treatment notes by introducing those treatment notes into evidence at trial. So Gregg waived this claim on appeal. *See O’Connor v. State*, 120 So. 3d 390, 397 (Miss. 2013) (appellant waived claim that trial court improperly admitted evidence about his prior charges because he invited error by introducing evidence of those charges).

In support of her argument, Gregg relies on non-binding authority from the New Jersey Supreme Court and the Ninth Circuit, and the separate statement in *Jordan v. State*, 212 So. 3d 817 (Miss. 2016) (King, J., objecting to the order with separate written statement). Appellant’s Br. 60–64. But this Court need look no further than its own binding precedent to reject Gregg’s specious claim.

Simply stated, Kirk’s summary of *Crime and Punishment* was fact-based lay testimony, not expert testimony governed by Mississippi Rules of Evidence 702 or 703. The State did not tender Kirk as an expert. And Gregg did not raise a *Daubert*⁶ challenge or object to her testimony under Rules 702 or 703. Kirk did not

⁶ *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

give any expert medical, scientific, or diagnostic testimony. Instead, she testified only to her observations, conversations, and counseling of Gregg and gave context to her treatment notes from those sessions (including the reference to *Crime and Punishment*), which Gregg introduced into evidence. Tr. 1226–30; Defense Ex. D-21 at 11.

This Court has explained that for a lay witness’s testimony to be considered an “opinion,” “the witness must possess some experience or expertise beyond that of the average, randomly selected adult.” *Sample v. State*, 643 So. 2d 524, 529–30 (Miss. 1994). Kirk’s summary of *Crime and Punishment* did not require “some experience or expertise beyond that of the average, randomly selected adult.” *See id.* Any adult who reads *Crime and Punishment* can summarize it. So, Kirk’s testimony about her treatment notes and *Crime and Punishment* was not even opinion.

On the contrary, this Court consistently holds that “any witness is competent to testify who has evidentiary facts within his personal knowledge, gained through any of his senses.” *Bland v. State*, 355 So. 3d 212, 216 (Miss. 2022) (quoting *Dennis v. Prisock*, 221 So. 2d 706, 710 (Miss. 1969)) (internal quotation marks omitted). And, under Mississippi law, that testimony should be admitted “if the evidence has any probative value at all.” *Blake v. Clein*, 903 So. 2d 710, 721 (Miss. 2005) (citing Miss. R. Evid. 401, cmt.). Under Mississippi Rule of Evidence 401, evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence

in determining the case.” Miss. R. Evid. 401. “The threshold for the admissibility of relevant testimony is not great. Evidence is relevant if it has any tendency to prove a consequential fact.” *Id.* (quotation omitted).

Kirk counseled Gregg nine times. Tr. 1213. She testified to many evidentiary facts she garnered through her conversations with and observations of Gregg, which were within her personal knowledge. Tr. 1200–1271. That included Gregg’s disclosure that she wanted to read *Crime and Punishment*, Tr. 1225; Defense Ex. D-21 at 11, and that she eventually read it over Spring Break, Tr. 1229–30, 1233; Defense Ex. D-21 at 17. Importantly, the State called Kirk as a lay witness to rebut Gregg’s insanity defense. Gregg’s expert, Dr. Clark, testified to his reliance on Kirk’s treatment notes. The State called Kirk to talk about those treatment notes. To that end, Kirk’s summary of *Crime and Punishment* was relevant as it gave context to Kirk’s testimony about her sessions with Gregg.

According to this Court, “[w]hen the insanity defense is tendered, both expert testimony and lay testimony are admissible and useful.” *Russell v. State*, 729 So. 2d 781, 785 (Miss. 1997) (citing *Groseclose v. State*, 440 So. 2d 297, 301 (Miss. 1983)). “It is within the actual and judicial knowledge of this Court that mental health professionals routinely place great reliance upon history obtained from lay witnesses. Our law does no less when it accepts the admissibility of lay witness testimony.” *Id.* at 786 (quotation omitted). On insanity, a lay witness “may not make a prognosis or project into some future time an opinion as to the mental

condition of the subject nor may he extend it to a date subsequent to the observation.” *Id.* Instead, the lay witness “is limited, *in expressing an opinion*, to the time when he had the subject under his observation.” *Id.* (quotations omitted). So “a lay witness must testify as to a defendant’s sanity at the time of the witness’s observation.” *Id.*

In *Russell*, this Court held that “a witness can testify to the witness’s observations and interpretation of those observations of a defendant prior to the incident of the specific crime.” *Id.* A “witness as to the mental condition of the defendant [] is not limited to the specific moment of the crime, nor is that witness required to be a witness of the criminal act.” *Id.* It therefore held that the trial court should have permitted Russell’s brother and sister to offer lay testimony about his mental state in support of his insanity defense. *Id.* at 783. Russell’s siblings testified in proffer about their observations, conversations, and meetings with Russell. *Id.* This Court concluded that the trial court correctly held that they could not testify about his mental condition *at the time of the shooting*, but they should have been permitted to testify “as to their reasonably proximate observations of defendant, and, if those observations were sufficient, allowed to express opinions as to this mental condition at the time of those observations.” *Id.* at 786.

Here, the converse is true: The trial court was right to admit Kirk’s lay testimony summarizing *Crime and Punishment* to rebut Gregg’s insanity defense. Kirk’s testimony was based on her observations and interpretation of those

observations *at the time* she counseled Gregg. She did not offer an opinion about Gregg's behavior in the future; she only testified about her direct observations and interactions with Gregg. Again, Gregg introduced Kirk's treatment notes into evidence at trial, and Kirk's summary of *Crime and Punishment* contextualized those notes.

Gregg's perfunctory argument that Kirk's summary of *Crime and Punishment* failed Mississippi Rule of Evidence 403's balancing test is unpersuasive. Appellant's Br. 59, 61. "It is inherent that nearly all evidence is prejudicial to a party in one way or another. The inquiry as it regards to admissibility is whether that prejudice is unfair." *Abrams v. Marlin Firearms Co.*, 838 So. 2d 975, 981 (Miss. 2003). Under Rule 403, the trial court has the "discretion" to exclude "otherwise relevant evidence" if "its probative value is *substantially* outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Johnson v. State*, 204 So. 3d 763, 769 (Miss. 2016) (quoting *Boggs v. State*, 188 So. 3d 515, 521 (Miss. 2016)) (emphasis added). Rule 403 "does not mandate exclusion but rather provides that the evidence *may* be excluded" if it is substantially more prejudicial than probative. *Ronk v. State*, 172 So. 3d 1112, 1134 (Miss. 2015) (quoting *Jones v. State*, 904 So. 2d 149, 152 (Miss. 2005)).

The probative value of Kirk's summary of *Crime and Punishment*—discussed above—was not "substantially outweighed" by the risk of unfair

prejudice or “juror confusion,” see Appellant’s Br. 59, and under *Ronk*, even if it were, it was still within the trial court’s discretion to admit the testimony. Kirk merely summarized a book referenced in the treatment notes Gregg introduced into evidence. Any theoretical risk of unfair prejudice or jury confusion did not substantially outweigh the testimony’s probative value.

Even if this Court finds that the trial court should not have permitted Kirk to summarize *Crime and Punishment*, any error was harmless. This Court has consistently held that “errors may be deemed harmless where ‘the same result would have been reached had they not existed.’” *Tate v. State*, 912 So. 2d 919, 926 (Miss. 2005) (quoting *Burnside v. State*, 882 So. 2d 212, 216 (Miss. 2004)). This Court will not “reverse a conviction where the overwhelming weight of the evidence supports the guilty verdict”—even if an error occurred. *Id.* That is undoubtedly the case here as the State introduced overwhelming evidence against Gregg, including, *inter alia*: (1) security footage, State’s Exs. S-9, S-46; (2) text messages and testimony of Gregg’s friends who she contacted immediately after murdering Ashley, Tr. 485–522, 544–558, 863–84; State Exs. S-4–S-6, S-56; (3) evidence that Gregg said, “I shot my mom three times, and, as soon as my stepdad gets home, I got three shots for him,” Tr. 536, 736, 1428; (4) B.W.’s testimony that Gregg showed her Ashley’s dead body and admitted to shooting Ashley three times and planned to shoot Heath when he got home from work, Tr. 522–44; (5) evidence that Gregg texted Heath from Ashley’s phone to find out when he would be home, Tr. 580–82, 778–80; State’s Ex. S-8; (6) evidence that Gregg removed the kitchen

security camera and hid it in the refrigerator, Tr. 536, 606–09, 706–07, 1420–21; (7) Heath’s testimony that Gregg shot him, fled, and then he found Ashley’s dead body in Gregg’s bedroom, Tr. 587–98; (8) police officer, investigator, and forensic expert testimony, Tr. 454–64, 464–85, 646–65, 671–790, 790–809, 809–20, 820–32, 832–43; (9) Leber’s testimony about Gregg’s treatment for anxiety and depression, Tr. 1156–1200; (10) Kirk’s testimony about Gregg’s counseling for anxiety and depression, Tr. 1200–1271; and (11) Dr. Pickett’s testimony about his opinion that Gregg understood the nature and quality of her actions when she killed Ashley and tried to kill Heath, Tr. 1334–1478. Faced with this mountain of evidence, Gregg would have been convicted with or without Kirk’s summary of *Crime and Punishment*.

The trial court committed no reversible error during the guilty phase of Gregg’s trial. As a result, this Court should affirm Gregg’s convictions.

Penalty-Phase Claims

After the jury returned its guilty verdicts, Tr. 1573; CP 1092, the trial court proceeded with sentencing under *Miller*. Tr. 1579. From the outset of the trial court proceedings, the parties and the trial court acknowledged the necessity of a *Miller* hearing because Gregg was fourteen when she committed her crimes. Tr. 1488–90, 1581. The trial court recognized that to sentence Gregg to life imprisonment, which would be without parole for a first-degree murder conviction under the parole statute, the jury must consider the *Miller* factors: “chronological age, family and home environment, the circumstances of the homicide offense,

incompetencies associated with youth, possibility of rehabilitation.” Tr. 1488–89, 1581. Instructions SS-1 and SS-2 instructed the jury to consider the *Miller* factors before imposing its sentence. Tr. 1489–90; CP 1093–96. When the trial court asked defense counsel whether he objected to the *Miller* factors set out in Instructions SS-1 and SS-2, he said: “No, Your Honor.” Tr. 1488. And when the trial court asked whether he objected to the “sentencing schematic” laid out in Instructions SS-1 and SS-2, he said he had no objection and withdrew Gregg’s proposed sentencing instructions. Tr. 1489–90.

Neither the State nor Gregg called any witnesses during the *Miller* hearing, but the trial court granted each party’s motion to adopt and incorporate by reference the record from the guilt phase, including the witness testimony the jury already heard. Tr. 1579–82. After the trial court read Instructions SS-1 and SS-2 to the jury, Tr. 1582–86, the parties made their arguments. The State argued that given the horrendous nature of Gregg’s crimes, the jury should sentence her to life imprisonment after it considered the *Miller* factors. Tr. 1586–89. It argued the *Miller* factors weighed in favor of a life-without-parole sentence. Tr. 1586–89. Rather than argue the jury should sentence her to life with the possibility of parole, Gregg asked the jury “to let the Judge make the determination.” Tr. 1590–90.

During its deliberations, the jury sent the trial court a note asking, “What is life in prison without parole? Years wise.” CP 1097. The trial court anticipated this question during the instructions conference. Tr. 1490. Neither party objected

when the trial court proposed responding with “something to the effect of: You have received all of the evidence and instructions in this case. Please continue your deliberations.” Tr. 1593. So, the trial court sent the jury a written response to that effect. CP 1098. After the jury deliberated and considered the *Miller* factors pursuant to Instructions SS-1 and SS-2, it sentenced Gregg to life imprisonment for first-degree murder and life imprisonment for attempted first-degree murder. Tr. 1594–96; CP 1099.

IV. Gregg’s claim that the first-degree murder sentencing instruction was improper is waived and meritless.

Gregg argues the trial court committed reversible error by giving Sentencing Instruction SS-1 because “the sentence of life without the eligibility of parole is in conflict with the constructions of [Miss. Code Ann. § 97-3-21].” Appellant’s Br. 23.⁷ She seemingly argues that Instruction SS-1 impermissibly allowed the jury to sentence her to life without parole for first-degree murder when the “life imprisonment” sentence referenced by the statute was intended to be with the possibility of parole. Appellant’s Br. 23–29. Not only is she wrong, but Gregg again seeks to charge the trial court with an error based on an issue never presented to it for decision. *See Pitchford*, 45 So. 3d at 232 (trial court “cannot be held to err on an issue not presented to it for decision”). Again, “[t]his Court has repeatedly held that ‘if no contemporaneous objection is made, the error, if any, is

⁷ The State will discuss the jury’s life imprisonment sentence for attempted first-degree murder in Section V below.

waived.” *Thorson*, 895 So. 2d at 112. That includes failures to object to jury instructions. *See Brent v. State*, 296 So. 3d 42, 50 (Miss. 2020) (failure to object to jury instruction waives the issue on appeal); *Neal v. State*, 15 So. 3d 388, 397 (Miss. 2009) (same). Defense counsel not only failed to object, but defense counsel affirmatively stated that Gregg had no objections to Instruction SS-1 and withdrew her own proposed sentencing instructions. Tr. 1489–91, 1582. Gregg therefore waived this claim and is procedurally barred from challenging Instruction SS-1 on appeal. *See Stewart v. State*, 367 So. 3d 985, 987 (Miss. 2023).

Acknowledging that she waived this claim, Gregg urges this Court to vacate her sentence on plain error review. Appellant’s Br. 23. But that doctrine affords her no relief. As explained above, the plain-error doctrine allows this Court to “recognize obvious error which was not properly raised by the defendant and which affects a defendant’s fundamental, substantive right.” *Stewart*, 367 So. 3d at 988 (quotation omitted). Under the plain-error doctrine, the Court must determine “(1) whether the trial court deviated from a legal rule; (2) whether the error is plain, clear, or obvious; and (3) whether the error prejudiced the outcome of the trial.” *Id.* “If the jury instructions, read as a whole, fairly announce the law of the case and create no injustice, no reversible error will be found.” *Windless v. State*, 185 So. 3d 956, 960 (Miss. 2015) (citation omitted).

Instruction SS-1 was a correct statement of the law, so the trial court did not “deviate from a legal rule” by giving Instruction SS-1. This Court has explicitly held that juveniles convicted of first-degree murder may be constitutionally

sentenced to life-without-parole under section 97-3-21 after a *Miller*-compliant hearing. *Johnson v. State*, 396 So. 3d 1073, 1078 (Miss. 2024). That is exactly what happened here: the jury sentenced Gregg to life-without-parole for first-degree murder after her *Miller*-compliant sentencing hearing. And Instruction SS-1 correctly instructed the jury to consider the *Miller* factors before sentencing her to either life imprisonment (without parole) or life imprisonment with the possibility of parole, or the trial would sentence her if it could not decide. CP 1093–94.

Gregg unnecessarily complicates the issue by invoking several canons of statutory construction, including the rule of lenity, Appellant’s Br. 26, negative-implication, Appellant’s Br. 26–27, and that statutes be read *in pari materia*, Appellant’s Br. 27–28. But this Court consistently holds that the gold standard for determining legislative intent is the plain language of the statute. *Hall v. State*, 241 So. 3d 629, 631 (Miss. 2018) (citations omitted). “If the words of a statute are clear and unambiguous, the Court applies the plain meaning of the statute and refrains from using principles of statutory construction.” *Id.* (quotation omitted). So where, as here, a statute is clear and unambiguous, this Court will not use the statutory construction canons Gregg urges this Court to apply.

Gregg makes much of the fact that the Mississippi Legislature “substantially amended” section 97-3-21 effective July 1, 2024, but her argument fails from the start as this case exemplifies the proper application of that statute

to sentencing juveniles consistent with *Miller*. The 2024 amendment reflects *Miller*'s requirement that for a juvenile to be sentenced to life without parole, the jury must consider the *Miller* factors. *Johnson*, 396 So. 3d at 1077. As a result, a juvenile convicted of first-degree murder "shall be sentenced pursuant to Section 97-3-21(2)." *Id.* Gregg was convicted of first-degree murder after July 1, 2024, so section 97-3-21(2) applied. Instruction SS-1 reflected a proper application of section 97-3-21(2), and Gregg was sentenced consistently with that statute and its adoption of *Miller*.

The jury convicted Gregg of first-degree murder, which is not a parole-eligible offense. Tr. 1573; CP 1092; *See* Miss. Code Ann. § 47-7-3(d) (first-degree murder is not a parole-eligible offense). Before the amendment to section 97-3-21, application of section 47-7-3 to a first-degree murder conviction "was really a life-without-parole sentence." *Johnson*, 396 So. 3d at 1076. That is not the case for juvenile offenders post-*Miller* and the Mississippi Legislature's codification of *Miller* in section 97-3-21(2). *Miller* "declared unconstitutional the imposition of *mandatory* life-without-parole sentences on defendants who were under eighteen at the time of their crimes." *Id.* (emphasis added). The Mississippi Legislature took "action specifically aimed at sentencing juveniles in light of *Miller*." *Id.* at 1077.

Now, a juvenile convicted of first-degree murder after July 1, 2024, like Gregg, "may be sentenced to life imprisonment ... 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.” *Id.* at 1078 (quoting Miss. Code Ann. § 97-3-21(2)(b)). After application of the *Miller* factors, a juvenile convicted of first-degree murder can be sentenced to life imprisonment under section 97-3-21(2)(b) and barred from seeking parole under section 47-7-3(d). *Id.* This Court held in *Johnson* that the trial court’s application of section 47-7-3 to sentence Johnson, who was seventeen when he committed first-degree murder, to life imprisonment without the possibility of parole after a *Miller* hearing was not an abuse of discretion. *Id.* Thus, in harmony with *Miller*, section 97-3-21(2)(b) allowed Gregg’s jury to sentence her to life-without-parole consistent with section 47-7-3(d)—but only after it considered the *Miller* factors.

Instruction SS-1 fairly and accurately reflected a proper application of section 97-3-21(2)(b). The jury was instructed to consider these *Miller* factors in making its decision: “(1) The Defendant’s chronological age, (2) The Defendant’s family and home environment, (3) The circumstances of the homicide offense, (4) The Defendant’s incompetencies associated with youth, and (5) The Defendant’s possibility of rehabilitation.” CP 1093. The instructions then told the jury it could unanimously sentence Gregg to life imprisonment or to life imprisonment with the possibility of parole or, if it was unable to unanimously agree, it could find that it was “unable to affix the punishment.” CP 1093–96.

The jury knew it had the option to sentence Gregg to life without parole even though the Instruction SS-1 specified “life imprisonment” or “life imprisonment with the possibility of parole” because both the State and defense

counsel argued in closing that the options included life *without* parole and life *with* the possibility of parole. Tr. 1586–91. Those options were correct under *Miller* because a jury must consider the *Miller* factors before sentencing a juvenile to life-without-parole under section 47-7-3. *Johnson*, 396 So. 3d at 1076–77. After the *Miller* hearing, the jury sentenced Gregg to life imprisonment—which under section 47-7-3 meant without parole—rather than life imprisonment with the possibility of parole. Tr. 1594–96; CP 1099.

Because Instruction SS-1 “fairly and accurately” stated the law in section 97-3-21(2) as required by *Miller*, the trial court did not “deviate from a legal rule.” The trial court therefore did not commit plain error. Gregg’s first-degree murder sentence should be affirmed.

V. Gregg’s life imprisonment sentence for attempted first-degree murder is not unconstitutional.

Gregg claims that her life imprisonment sentence for attempted first-degree murder is unconstitutional under *Graham v. Florida*, 560 U.S. 48 (2010). But unlike her first-degree murder sentence, Gregg’s attempted first-degree murder sentence is a parole-eligible conviction.

As with her argument that the trial court erred by giving Instruction SS-1, Gregg waived any argument on appeal that Instruction SS-2 was improper. *See Pitchford*, 45 So. 3d at 232 (trial court “cannot be held to err on an issue not presented to it for decision”). Defense counsel affirmatively stated that Gregg had no objections to Instruction SS-2 and withdrew her own proposed sentencing

instructions. Tr. 1489–91, 1582. Gregg therefore waived this claim and is procedurally barred from challenging Instruction SS-2 on appeal. *See Stewart*, 367 So. 3d at 987. Her claim is nonetheless meritless because she is not barred from seeking parole on her attempted first-degree murder conviction.

While Gregg’s “life imprisonment” sentence for first-degree murder is without parole as explained in Section IV above, she will become eligible for parole on her attempted first-degree murder sentence after serving twenty years. A person convicted of attempted murder “shall be imprisoned for life...if the punishment is so fixed by the jury in its verdict after a separate sentencing hearing.” Miss. Code Ann. § 97-1-7(2). Unlike first-degree murder, offenders convicted of attempted murder are eligible for parole. Offenders convicted of “violent crimes,” which includes attempted murder under section 97-3-2, “shall be eligible for parole only after having served fifty percent (50%) or twenty (20) years, whichever is less....” Miss. Code Ann. 47-7-3(1)(h)(i)(2). Gregg was sentenced to “life imprisonment” for attempted first-degree murder under section 97-1-7(2) and will therefore become eligible for parole after serving twenty years.

Even so, any error the trial court made in giving Instruction SS-2 was harmless. Whether the jury sentenced Gregg to “life imprisonment” or to “life imprisonment with the possibility of parole” for attempted first-degree murder, the result would have been the same: She will become parole eligible after serving twenty years. And in any event, she is serving a life-without-parole sentence for

first-degree murder. Her attempted first-degree murder sentence should therefore be affirmed.

VI. The trial court conducted a *Miller*-compliant hearing.

As laid out above, Gregg’s life imprisonment sentence for first-degree murder is without the possibility of parole while her life imprisonment sentence for attempted first-degree murder is with the possibility of parole. Thus, *Miller* and its progeny apply only to Gregg’s first-degree murder sentence. Gregg received that to which she was entitled: a sentencing hearing after which the jury took “into account” and “consider[ed] each factor identified in *Miller*.” *Chandler v. State*, 242 So. 3d 65, 69–70 (Miss. 2018). *Miller* bars *mandatory* life-without-parole sentences for juvenile offenders and requires only that the sentencer consider the *Miller* factors after the juvenile offender has the *opportunity* to present evidence in mitigation. That happened here.

Gregg failed to object to the sentencing hearing itself, object to the sentencing procedure set out by the trial court, or claim that she was entitled to anything more than what *Miller* requires. She again wants this Court to review a claim not presented to the trial court. *See Pitchford*, 45 So. 3d at 232 (trial court “cannot be held to err on an issue not presented to it for decision”). “This Court has repeatedly held that ‘if no contemporaneous objection is made, the error, if any, is waived.’” *Thorson*, 895 So. 2d at 112. Admitting she waived this claim, Gregg argues the Court should vacate her sentence “under the plain-error doctrine, because constitutional defects at sentencing implicate fundamental

rights and the fairness of the proceeding.” Appellant’s Br. 32 (citation omitted). Under the plain-error doctrine, the Court must determine “(1) whether the trial court deviated from a legal rule; (2) whether the error is plain, clear, or obvious; and (3) whether the error prejudiced the outcome of the trial.” *Stewart*, 367 So. 3d at 988.

That the trial court did not “deviate from a legal rule” because Gregg’s sentencing hearing comported with *Miller* and its progeny. This is fatal to her argument. In *Miller*, the U.S. Supreme Court held that “the Eighth Amendment forbids a sentencing scheme that *mandates* life in prison without possibility of parole for juvenile offenders.” *Miller*, 567 U.S. at 479 (emphasis added). As discussed in Section IV above, *Miller* does not prohibit the imposition of life-without-parole sentences for juveniles convicted of first-degree murder. Instead, it requires the sentencer “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Id.* at 480. To that end, the *Miller* Court enumerated five factors to be weighed in considering whether to sentence a juvenile to life-without-parole: (1) “chronical age and its hallmark features;” (2) “family and home environment;” (3) “circumstances of the homicide offense;” (4) whether the juvenile “might have been charged and convicted of a lesser offense if not for incompetencies associated with youth;” and (5) “the possibility of rehabilitation.” *Id.* at 478; *See Parker v. State*, 119 So. 3d 987 (Miss. 2013) (adopting *Miller*). In sum, *Miller* “foreclosed imposition of a *mandatory* sentence of life without parole on juvenile offenders.”

Chandler, 242 So. 3d at 69 (citing *Jones v. State*, 122 So. 3d 698, 702 (Miss. 2013)) (emphasis in original).

This Court has recognized that *Miller* does not impose a “rebuttable presumption” “in favor of parole eligibility for juvenile homicide offenders.” *Id.* Instead, “the burden rests with the juvenile offender ‘to convince the sentencing authority that *Miller* considerations are sufficient to prohibit’ a sentence of life without parole.” *Wharton v. State*, 298 So. 3d 921, 927 (Miss. 2019) (quoting *Jones*, 122 So. 3d at 702). According to this Court, the U.S. Supreme Court “implie[d] as much” in *Montgomery* “with the admonition that ‘prisoners like Montgomery must be given *the opportunity to show* their crime did not reflect irreparable corruption ...” *Id.* (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 213 (2016)) (emphasis in original). The sentencer must “consider” and “take into account” each factor, but *Miller* and its progeny do not require the sentencer “to issue findings on each factor” or limit it to “considerations strictly personal to the juvenile offender.” *Chandler*, 242 So. 3d at 70. After considering the *Miller* factors, the sentencer can sentence a juvenile to life imprisonment without the possibility of parole or with the possibility of parole. *Id.* at 69.

In 2021, the U.S. Supreme Court reiterated that individuals who were under the age of eighteen when they committed a homicide can be sentenced to life-without-parole, “but only if the sentence is not mandatory and the sentencer therefore has discretion to impose a lesser punishment.” *Jones v. Mississippi*, 593 U.S. 98, 100 (2021). As explained in Section IV above, section 97-3-21(2)(b) gives

the jury the *discretion* to sentence a juvenile convicted of first-degree murder to life imprisonment without parole—it is not mandatory. A state’s discretionary sentencing system, like Mississippi’s, “is both constitutionally necessary and constitutionally sufficient.” *Id.* at 105. “*Miller* drew a clear distinction between mandatory life-without-parole sentences and life-without-parole sentences based on the sentencer’s judgment.” *McGilberry v. State*, 292 So. 3d 199, 205 (Miss. 2020) (citing *Miller*, 567 U.S. at 479). And it “does not foreclose a sentencer’s ability to impose life without parole on a juvenile offender” if the juvenile receives a hearing and the sentencer considers the *Miller* factors. *Id.* at 205–06. What’s more, the *Jones* Court held that an “on-the-record sentencing explanation” is unnecessary “to ensure that a sentencer considers a defendant’s youth.” *Jones*, 593 U.S. at 114.

That is precisely what happened here. After Gregg was convicted of first-degree murder, she received a sentencing hearing and was then given the opportunity to present evidence in mitigation. Tr. 1579–96, 1581–82. As discussed in Section VIII below, evidence on each *Miller* factor was presented during the guilt phase of Gregg’s trial. That Gregg chose not to put on evidence in addition to that presented during the guilt phase of her trial is not the trial court’s fault—what’s important is that she had the opportunity to do so. The jury was instructed to consider each *Miller* factor in deciding whether to sentence her to life without the possibility of parole or life with the possibility of parole. CP 1093–94. Gregg’s sentencing hearing therefore complied with *Miller* and its progeny.

Gregg claims for the first time on appeal that the trial court erred by proceeding immediately to sentencing after she was convicted of first-degree murder and deprived her of notice and the opportunity to be heard. Appellant's Br. 32–35. Not so. She did not object to the trial court proceeding directly to sentencing. She did not request any time to prepare for sentencing. And she was not foreclosed from presenting any evidence she wanted to present under *Miller*. Instead, she moved to incorporate and adopt the record from the guilt phase and told the trial court she had no witnesses. That made sense because mitigation evidence would have been cumulative as the jury had just heard evidence on the *Miller* factors during the guilt phase. It made further sense as it would have amplified the State's opportunity to rebut the same. And as fully set forth in Section VIII below, the record included sufficient evidence on each *Miller* factor.

What's more, this Court has held that no cooling off period is required between the guilt and sentencing phases of a trial—even in death penalty cases. *McGilberry*, 741 So. 2d at 919; *Conley v. State*, 790 So. 2d 773, 799 (Miss. 2001). In *McGilberry*, the trial court only recessed for fifteen minutes between the guilt and sentencing phases of trial. *McGilberry*, 741 So. 2d at 919. There was “no evidence to suggest that the trial judge abused his discretion” by proceeding immediately to sentencing, especially because “*McGilberry's* counsel did not assert that he needed a longer break in order to adequately prepare for the sentencing portion of the trial.” *Id.* The trial court here likewise did not abuse its

discretion by immediately conducting the *Miller* hearing after Gregg was convicted. And she did not object or request more time.

Gregg also had sufficient notice that a separate sentencing hearing would be required and the *Miller* factors would be addressed from the beginning. Apart from bifurcated proceedings being required under Mississippi law, the record reflects that defense counsel was put on notice of the separate sentencing phase on several occasions. At a pretrial conference, the State requested that “comments about sentencing be reserved for” the sentencing phase of the trial, and the trial court agreed. Tr. 202. The State also moved to exclude a report from one of Gregg’s experts, noting that the report “might be appropriate” for sentencing if the jury were to find Gregg guilty. Tr. 263–66. The trial court likewise acknowledged the bifurcated nature of the proceedings, stating that “if the jury does not acquit [Gregg], there will be a sentencing phase.” Tr. 278. At the jury instruction conference during the guilt phase of the trial, the trial court said it was “not putting the cart before the horse,” but it wanted to make sure the parties had exchanged instructions for the sentencing phase. Tr. 1149. Then, before she was found guilty, the trial court and the parties specifically discussed *Miller* and the sentencing instructions. Tr. 1488–91. So, Gregg had ample notice well in advance that if she was found guilty there would be a separate sentencing hearing, and the jury would be instructed on the *Miller* factors.

As an aside, Gregg’s repeated suggestion that she should not have been sentenced to life-without-parole because there was no evidence of “permanent

incurrigibility” is misleading at best. Appellant’s Br. 33, 38, 47, 49. This Court and the U.S. Supreme Court both held that a finding of “permanent incurrigibility” is not required to sentence a juvenile to life-without-parole: “[A] separate factual finding of permanent incurrigibility is not required.” *Jones*, 593 U.S. at 104; *Alexander v. State*, 333 So. 3d 19, 27 (Miss. 2022). As long as the sentencer follows the procedure established by *Miller* and its progeny, a juvenile’s life-without-parole sentence is constitutional. *See Alexander*, 333 So. 3d at 26–29.

To try to save her claim, Gregg makes an obligatory argument that trial counsel was constitutionally ineffective during sentencing. Appellant’s Br. 37–38. “Ordinarily, claims of ineffective assistance of counsel are not addressed on direct appeal” and should generally be raised in post-conviction proceedings. *Pace v. State*, 242 So. 3d 107, 118 (Miss. 2018); *Moore v. State*, 287 So. 3d 905, 916 (Miss. 2019). This Court will only consider ineffective-assistance-of-counsel claims on direct appeal when “(1) the record affirmatively show[s] ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate to allow the appellate court to make the findings without consideration of the findings of fact of the trial judge.” *Moore*, 287 So. 3d at 916 (quotation omitted); *see* Miss. R. App. P. 22(b). The record here does not affirmatively show ineffectiveness of constitutional dimensions and the State declines to stipulate that the record is adequate to allow the Court to make a finding on the merits.

But Gregg nonetheless failed to show (1) that her counsel’s performance was deficient, and (2) that deficiency prejudiced the outcome of the proceedings.

Strickland v. Washington, 466 U.S. 668, 687 (1984). There is a strong presumption that counsel’s performance falls within the wide range of reasonable professional assistance. *Id.* at 689. In *Wallace*, our Court of Appeals specifically acknowledged that, when an ineffective-assistance-of-counsel claim is based on trial counsel’s *inaction*, “the reasons for which are not clear from the record,” it will “deny relief on direct appeal without prejudice to a future post-conviction claim.” *Wallace v. State*, 166 So. 3d 520, 525 (Miss. Ct. App. 2014). Here, defense counsel moved to incorporate and adopt the guilt phase record, which included evidence on each *Miller* factor. It could have been defense counsel’s strategy not to present cumulative evidence that had just been presented to the jury during a five-day trial.

To prove prejudice, Gregg “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Gilley v. State*, 748 So. 2d 123, 129 (Miss. 1999) (quoting *Strickland*, 466 U.S. at 694). The evidence of Gregg’s callous, heinous, and atrocious crimes was overwhelming. Had defense counsel presented something more at the *Miller* hearing, she likely still would have been sentenced to life imprisonment. So, she can prove neither *Strickland* prong.

The trial court conducted a sentencing hearing that complied with *Miller* and section 97-3-21. This Court should affirm Gregg’s sentences.

VII. Gregg’s claim that the State made improper comments during closing argument at sentencing is waived and meritless.

Gregg’s claim that the State made improper comments during closing argument at sentencing is waived and erroneous. “Attorneys on both sides are generally afforded broad latitude during closing arguments.” *Moffett v. State*, 156 So. 3d 835, 857 (Miss. 2014) (quotation omitted). Generally, the “failure to object to the prosecution’s statements in closing argument constitutes a procedural bar.” *Ross v. State*, 954 So. 2d 968, 1001 (Miss. 2007) (citation omitted). “A contemporaneous objection must be made to allegedly erroneous comments made during closing argument or the point is waived.” *Smith v. State*, 724 So. 2d 280, 302 (Miss. 1998) (quotation omitted). “An appellate court is under no obligation to review an assignment of error when an objection was not made or when an objection was untimely.” *Slaughter v. State*, 815 So. 2d 1122, 1131 (Miss. 2002) (quotation omitted). By failing to contemporaneously object to the State’s closing argument, Gregg waived her right to raise the issue on appeal. *See Keller v. State*, 138 So. 3d 817, 859 (Miss. 2014).

When an appellant waives a claim of prosecutorial misconduct during closing argument, this Court can only review the claim “if the prosecutor’s statement was so inflammatory that the trial judge should have objected on his own motion.” *Evans v. State*, 226 So. 3d 1, 31 (Miss. 2017) (quoting *O’Connor v. State*, 120 So. 3d 390, 399 (Miss. 2013)). So, the question is “whether the alleged prosecutorial misconduct was so inflammatory that the judge should have

intervened.” *Id.* Here, the answer is no. Even if the State did make improper comments during closing argument, none of its comments were inflammatory enough to require the trial court to intervene on its own motion. What’s more, any error was harmless given the overwhelming evidence presented against Gregg.

Gregg strangely argues that the State improperly referenced her potential sentences because Mississippi appellate courts disfavor closing arguments that discuss the possible sentence a defendant can receive. Appellant’s Br. 40–41; *See* Tr. 1588. But she overlooks that *this was during the penalty phase*. Not allowing the State to comment on parole eligibility is nonsensical. And the State’s comment about parole-eligibility was not untrue. Parole eligibility changes all the time.⁸ So the State’s comment that “nobody knows how long she will stay there” if she is eligible for parole, and we “have no control over that” was an accurate assessment.

Gregg also claims that the State employed “inflammatory fear-mongering” during closing argument. Appellant’s Br. 41–42. Even though she did not object, Gregg claims that the trial court committed reversible error by allowing the State to comment that if she were paroled, “nothing would stop her from walking into a school ... shopping mall ... grocery stores ... movie theaters.” Tr. 1588–89. Gregg’s

⁸ *See, e.g.*, Miss. Code Ann. § 47-7-3 (2001) (as amended in 2001 by Laws 2001, Ch. 393, § 11) (July 1, 2001); Laws 2002, Ch. 412, § 1 (March 19, 2002); Laws 2004, Ch. 407, § 1 (April 22, 2004); Laws 2004, Ch. 520, § 1 (July 1, 2004); Laws 2005, Ch. 503, § 1 (April 20, 2005); Laws 2008, Ch. 438, § 1 (April 7, 2008); Laws 2010, Ch. 536, § 1 (July 1, 2010); Laws 2014, Ch. 457 (H.B. No. 585), § 40 (July 1, 2014); Laws 2015, Ch. 448 (H.B. No. 1267), § 1 (July 1, 2015); Laws 2016, Ch. 506 (H.B. No. 107), § 1 (May 13, 2016); Laws 2018, Ch. 416 (H.B. No. 387), § 5 (July 1, 2018); Laws 2020, Ch. 467 (S.B. No. 2469), § 1 (July 1, 2020); Laws 2021, Ch. 479 (S.B. No. 2795), § 2 (July 1, 2024); Laws 2024, Ch. 465 (S.B. No. 2448), § 2 (July 1, 2024).

assertion that this statement represented an improper “send-a-message” appeal to the jury fails because this Court has held that “the State’s use of a send-a-message argument in the sentencing phase is appropriate. *Hutto v. State*, 391 So. 3d 1192, 1196 (Miss. 2024) (citing *Thorson*, 895 So. 2d at 113; *King v. State*, 784 So. 2d 884, 889–90 (Miss. 2001)). In any event, neither statement was so inflammatory that it required the trial court’s *sua sponte* intervention.

Even if the State makes improper comments during closing argument, a conviction or sentence is only reversible if the “natural and probable effect of the improper argument of the prosecuting attorney is to create an unjust prejudice against the accused as to result in a decision influenced by the prejudice so created.” *Davis v. State*, 660 So. 2d 1228, 1248 (Miss. 1995) (quotation omitted). In *Jackson v. State*, 174 So. 3d 232 (Miss. 2015), the State made several improper statements during closing argument, but this Court held that Jackson did not contemporaneously object and therefore waived his claims on appeal. *Id.* at 237–38. So even though the State’s comments were improper, they were not so inflammatory to warrant reversal “given the evidence of guilt.” *Id.* at 236. In *Moffett*, this Court confirmed that “improper remarks made during closing arguments can be harmless error where the evidence of guilt is overwhelming.” *Moffett*, 156 So. 3d at 857 (citing *Dancer v. State*, 721 So. 2d 583, 590 (Miss. 1998)).

Such is the case here. Even if the State’s comments in closing arguments during sentencing were improper, the evidence supporting a life-without-parole sentence on Gregg’s first-degree murder conviction was overwhelming. As fully

set forth in Section III above, the State presented significant evidence against Gregg: (1) security footage, State's Exs. S-9, S-46; (2) text messages and testimony of Gregg's friends who she contacted immediately after murdering Ashley, Tr. 485–522, 544–558, 863–84; State Exs. S-4–S-6, S-56; (3) evidence that Gregg said, “I shot my mom three times, and, as soon as my stepdad gets home, I got three shots for him,” Tr. 536, 736, 1428; (4) B.W.'s testimony that Gregg showed her Ashley's dead body and admitted to shooting Ashley three times and planned to shoot Heath when he got home from work, Tr. 522–44; (5) evidence that Gregg texted Heath from Ashley's phone to find out when he would be home, Tr. 580–82, 778–80; State's Ex. S-8; (6) evidence that Gregg removed the kitchen security camera and hid it in the refrigerator, Tr. 536, 606–09, 706–07, 1420–21; (7) Heath's testimony that Gregg shot him, fled, and then he found Ashley's dead body in Gregg's bedroom, Tr. 587–98; (8) police officer, investigator, and forensic expert testimony, Tr. 454–64, 464–85, 646–65, 671–790, 790–809, 809–20, 820–32, 832–43; (9) Leber's testimony about Gregg's treatment for anxiety and depression, Tr. 1156–1200; (10) Kirk's testimony about Gregg's counseling for anxiety and depression, Tr. 1200–1271; and (11) Dr. Pickett's testimony about his opinion that Gregg understood the nature and quality of her actions when she killed Ashley and tried to kill Heath, Tr. 1334–1478.

That evidence, and the evidence highlighted in Section VIII below, overwhelmingly supported a life-without-parole sentence under the *Miller* factors. Even if the State had not made the now-complained-of comments, Gregg likely

still would have been sentenced to life without parole for first-degree murder. Thus, any error was harmless because the comments did not create “unjust prejudice” “resulting in a decision influenced by prejudice.” *Moffett*, 156 So. 3d at 854–55 (quotation omitted).

Finally, the State’s argument that “In the eyes of the law ... Carly Gregg is an adult,” was not an improper comment or clear misstatement of the law. Appellant’s Br. 42. Under Mississippi Code Annotated section 43-21-151(1)(a), the circuit court has exclusive original jurisdiction over juveniles charged with a crime punishable by life imprisonment or death if the crime was committed by an adult. Miss. Code Ann. § 43-21-151(1)(a). Further, when a juvenile commits or attempts to commit an act “with the use of a deadly weapon,” exclusive original jurisdiction lies with the circuit court. Miss. Code Ann. § 43-21-151(1)(b). Under both of those provisions Gregg was viewed as an adult in the eyes of the law.

Gregg also argues that trial counsel was constitutionally ineffective for not objecting to the State’s closing argument. Appellant’s Br. 43–44. Again, “claims of ineffective assistance of counsel are not addressed on direct appeal” and should generally be raised in post-conviction proceedings. *Pace*, 242 So. 3d 118; see Miss. R. App. P. 22(b). The record here does not affirmatively show ineffectiveness of constitutional dimensions and the State declines to stipulate that the record is adequate to allow the Court to make a finding on the merits.

But Gregg nonetheless failed to show (1) that her counsel’s performance was deficient, and (2) that deficiency prejudiced her defense. *Strickland*, 466 U.S. at

687. There is a strong presumption that counsel’s performance falls within the wide range of reasonable professional assistance. *Id.* at 689. “[C]omplaints concerning counsel’s failure to file certain motions, call certain witnesses, ask certain questions, and make certain objections fall within the ambit of trial strategy.” *Cole v. State*, 666 So. 2d 767, 777 (Miss. 1995) (citation omitted). To prove prejudice, Gregg “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Gilley*, 748 So. 2d at 129 (quoting *Strickland*, 466 U.S. at 694). The evidence of Gregg’s callous, heinous, and atrocious crimes was overwhelming. Even if defense counsel had objected to the State’s closing argument, she likely still would have been sentenced to life imprisonment. So, she can prove neither *Strickland* prong.

The trial court did not reversibly err by permitting the State’s closing argument during sentencing. Gregg’s sentences should be affirmed.

VIII. The *Miller* factors support Gregg’s life-without-parole sentence for first-degree murder.

Gregg’s argument that her life-without-parole sentence for first-degree murder was against the overwhelming weight of the evidence is futile. Appellant’s Br. 44–49. As explained above, Gregg’s sentencing hearing complied with *Miller*’s requirements. The trial court granted the State’s and Gregg’s motions to incorporate and adopt the guilt phase record. Tr. 1581–82. That made sense because the jury had just heard five days of testimony, hours of testimony from

three expert witnesses, and testimony from Gregg’s treating medical provider and counselor. Rather than call witnesses back to the stand to give testimony that the jury already heard, defense counsel adopted the testimony and evidence from the guilt phase. The guilt-phase record contains significant evidence on each *Miller* factor. And the jury was properly instructed to consider the *Miller* factors before imposing a sentence. CP 1093–94.

“[S]entencers are afforded ‘wide discretion in determining the weight to be given relevant mitigation evidence.’” *Alexander*, 333 So. 3d at 27 (quoting *Jones*, 593 U.S. at 119). Gregg’s sentence should be affirmed because she received a *Miller* hearing, the jury was properly instructed on the *Miller* factors, and her life-without-parole sentence for first-degree murder was supported by record evidence on each *Miller* factor. *See Wharton*, 298 So. 3d at 931 (trial court satisfied its obligation under *Miller* by holding a *Miller* hearing and taking “into consideration the characteristics and circumstances unique to juveniles”).

A. Chronological Age

Gregg was fourteen when she murdered Ashley. There was no evidence to indicate she was “intellectually or emotionally immature” for her age—quite the opposite. *See Wharton*, 298 So. 3d at 929. Gregg’s friends, Heath, and the experts testified that Gregg was intelligent and did well in school. *See, e.g.*, Tr. 489, 545–46, 569, 864, 977–78, 980, 1167, 1217, 1224, 1294–95. She had relationships with friends, her parents, and had a boyfriend. *See, e.g.*, Tr. 485–88, 522–23, 545–48,

559–64, 864. The jury was therefore presented with evidence on this *Miller* factor, which supported its life-without-parole sentence.

B. Family and Home Environment

The jury heard significant evidence about Gregg’s family and home life. Dr. Clark testified that Gregg had a “somewhat difficult childhood.” Tr. 978. Gregg’s biological father, Kevin, may have suffered from addiction and psychiatric issues. Tr. 562–63, 621, 1369–1375. Gregg was affected by Kevin’s issues and hated visiting him, which required her to attend counseling when she was young. Tr. 563, 979–82. She was also impacted when her little sister died from a genetic abnormality when Gregg was four. Tr. 978–79.

Although Gregg’s early childhood may have been “somewhat difficult,” she was primarily raised by Ashley and Heath and was essentially “extricated” from the situation. *See Wharton*, 298 So. 3d at 929. Ashley and Heath provided a loving home environment and fostered Gregg’s academic success. Tr. 558–646. They also encouraged her to participate in hobbies she enjoyed, like karate, video games, and guitar lessons. Tr. 563–64. And they sought treatment for Gregg when they discovered she was “cutting” and suffering from anxiety and/or depression. Tr. 573, 985–88, 1205–07. The jury was presented with evidence on this *Miller* factor, which supported its life-without-parole sentence.

C. Circumstances of the Homicide Offense

The jury heard about the horrendous nature of Ashley’s murder in detail. Gregg retrieved the gun from her parents’ room, went looking for Ashley while

concealing the weapon from the security camera, and shot Ashley three times in the face and head. She texted and called multiple friends asking for help, acknowledging she had done something wrong and could not tell them about it over the phone. She then texted Heath from Ashley's phone and lied in wait for him to come home. After shooting Heath the moment he opened the door to the home, Gregg fled. She was "the sole perpetrator of the crime" and there "was no peer pressure from others" urging her to kill Ashley. *See Wharton*, 298 So. 3d at 930. Gregg's actions "were planned and deliberate." *Id.* Given the "heinousness and deliberateness" of Gregg's actions, this factor weighed in favor of a life-without-parole sentence.

D. Incompetencies Associated with Youth

Although she was young, Gregg was represented by legal counsel throughout all stages of the proceedings who could explain the legal system and the charges against her. She stipulated that she was competent to stand trial, meaning she could assist in her defense. Tr. 154–56. And Dr. Gugliano testified to Gregg's competence. Tr. 1304–06. This factor weighed in favor of Gregg's life-without-parole sentence. *See Wharton*, 298 So. 3d at 930.

E. Possibility of Rehabilitation

The jury heard about the psychiatric treatment Gregg had undergone while she was in custody awaiting trial. Tr. 943–1134, 1334–1478. But it also heard that she had not expressed any remorse. Tr. 505. Although she had the support of family and friends, it was not enough to overcome the other four factors that

weighed heavily in favor of Gregg’s life-without-parole sentence. The jury was thus presented with evidence on this *Miller* factor, which supported its life-without-parole sentence. *See Wharton*, 298 So. 3d at 931.

The jury was instructed on the *Miller* factors. It heard evidence on each of those factors. And its decision was an individualized consideration of Gregg’s “youth and attendant characteristics.” *Miller*, 567 U.S. at 479–83. Gregg’s life-without-parole sentence for first-degree murder should be affirmed.

IX. There can be no cumulative error where there is no error at all.

Gregg has failed to show that the trial court committed a single reversible error, much less cumulative error. “Where there is no reversible error in any part, there is no reversible error to the whole.” *Doss v. State*, 709 So. 2d 369, 400 (Miss. 1996) (ellipsis omitted). Each of Gregg’s claims has been refuted by substantial authority discussed above. And even if the Court were to find that an error did occur, no such error was substantial enough to warrant reversal. This is not a case wherein “the aggregate effect of various errors ... create[d] an atmosphere of bias, passion and prejudice that ... effectively denie[d] the defendant of a fundamentally fair trial.” *McGilberry*, 741 So. 2d at 924. The record shows that Gregg received that to which she was entitled—a fair trial. This Court should affirm her convictions and sentences.

CONCLUSION

No errors were committed in the trial court. Gregg's convictions and sentences should therefore be affirmed.

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CERTIFICATE OF SERVICE

I, Allison Kay Hartman, certify that I have electronically filed this document with the Clerk of the Court using the MEC system, which sent notification to all counsel of record, and mailed, via U.S. Mail, postage pre-paid to the following:

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THIS, the 12th day of December, 2025.

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