IN THE SUPREME COURT OF MISSISSIPPI

WILLIAM MATTHEW WILSON, *Appellant*

versus **NO. 2007-DP-01218-SCT**

STATE OF MISSISSIPPI, *Appellee*

BRIEF OF APPELLEE

JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

PAT McNAMARA
SPECIAL ASSISTANT ATTORNEY GENERAL
Miss. Bar No. [redacted]
Counsel of Record

MARVIN L. WHITE, JR.
ASSISTANT ATTORNEY GENERAL

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

STATUTES

IN THE SUPREME COURT OF MISSISSIPPI

WILLIAM MATTHEW WILSON, *Appellant*

versus **NO. 2007-DP-01218-SCT**

STATE OF MISSISSIPPI, *Appellee*

BRIEF OF APPELLEE

STATEMENT OF THE CASE

This case arises from the capital murder of two-year old Malorie Conlee (hereinafter Malorie) on or about April 29, 2005, in Lee County, Mississippi. On that date, Malorie had been airlifted from a spot near the mobile home she and her mother shared with William Matthew Wilson (hereinafter Wilson) and transported to the North Mississippi Medical Center in Tupelo where she was pronounced dead a short time later. After offering several different false versions of how Malorie came to sustain her lethal injuries, Wilson ultimately confessed that he had beaten her to death with his fists and also confessed to other abuses that he had suffered upon Malorie.

On July 19, 2005, Wilson was indicted by the Lee County Grand Jury in a two count indictment. Count I of the indictment charged Wilson with the capital murder of Malorie, while engaged in the commission of the crime of felonious abuse of a child in violation of

MISS.CODE ANN. § 97-3-19(2)(f). Count II of the indictment charged Wilson with the felonious child abuse of Malorie, on or about January 19, 2005. C.P at 5-6.

Prior to the scheduled trial date, at which the State had informed the defense that it would seek the death penalty, Wilson entered into an agreement with the prosecution to plead guilty to both counts of the indictment. In exchange for the guilty pleas the prosecution would recommend a sentence of life without parole as to the first count and a sentence of 20 years on the second count to run consecutively to the first count. On March 5, 2007, the trial court convened for the purpose of considering Wilson's pleas of guilty to the two counts. Tr. 178-205. During that hearing Wilson stated to the trial court that he was not satisfied with the services of his court appointed attorneys stating, "there could have been more done" and added, without further explanation when questioned by the court, that he was entering the plea because he did not believe he could get a fair trial. Tr. 204. At that time the court informed Wilson that his guilty plea could not be accepted and informed him that a new trial date would be set. Tr. 205.

On May 24, 2007, the court below reconvened to consider Wilson's latest desire to enter guilty pleas to the two counts of the indictment. Tr. 205-220. Wilson was fully informed prior to and at this second plea hearing that the prosecution had withdrawn it's previous sentencing recommendation and intended to present evidence at a subsequent sentencing hearing in support of the imposition of the death penalty. Tr. 212-214.

The trial court questioned Wilson regarding his earlier assertion that he was not satisfied with the performance of his attorneys. Tr. 206-208. Wilson assured the trial court

that he was now satisfied with their services and fully understood the proceedings he was involved in at that time. Tr. 205-208, 212. The plea hearing concluded and the court again convened on May 29, 2007, to carry out the sentencing hearing.

The sentencing phase of the trial was conducted before the trial court sitting without a jury. C.P. 143-44. The sentencing hearing began with Wilson asking the court to require the prosecution to offer up the plea agreement that had been withdrawn after the first plea hearing ended. Tr. 223. The court declined to order such a requirement. Tr. 224-225. The sentencing hearing proceeded wherein both sides presented witnesses and argument to the court. On May 30, 2007, after the conclusion of the sentencing phase the trial court entered a sentencing order. Tr. 390-95. In pertinent part the Order reads:

> This cause is before the Court for hearing of the sentencing phase of the capital murder charge contained in Count I of the indictment. The Defendant entered his plea of guilty to the charge of capital murder on May 24, 2007, and on the same date waived a jury trial in writing, agreeing with the State of Mississippi that the Court would hear the evidence offered and impose a sentence pursuant to § 9-19-101, Mississippi Code of 1972, Annotated, as amended. Defendant on this same date entered a plea of guilty to felony child abuse as charged in Count II of the indictment.
>
> The Court finds that on this state of the record the sole sentences to be considered by the Court are either death or life imprisonment without eligibility for parole.
>
> The Court has heard testimony and received evidence in the form of photographs, statements and expert testimony. In addition, the Court has heard arguments presented by the State of Mississippi and the Defendant's attorney for and against imposition of the death penalty. The Court, having heard the evidence and arguments and considered same as well as the applicable law of the State of Mississippi is of the opinion and finds:
>
> I. That sufficient factors exist as enumerated in subsection 7 of §99-19-101,

Mississippi Code of 1972, Annotated, as amended, to justify this Court in returning and imposing a sentence of death. Specifically, the Court finds beyond a reasonable doubt that the Defendant actually killed Malorie Conlee, a human being. The Defendant confessed to having done so and Dr. Hayne, a pathologist, testified to the fact.

II. That the following aggravating circumstances or factors among those enumerated in subsection 5 of §99-19-101, Mississippi Code of 1972, Annotated, as amended, exist:

A. The Court finds beyond a reasonable doubt that the capital offense (killing Malorie Conlee) was committed while the Defendant was engaged in the commission of the crime of felony child abuse in violation of subsection (2)(f) of §97-5-39, Mississippi Code of 1972, Annotated, as amended; and

B. The Court finds beyond a reasonable doubt that the capital offense was especially heinous, atrocious and cruel in that the victim, Malorie Conlee, a child 2 years of age and weighing something less than 20 pounds, was struck by the Defendant three times on her head resulting in both internal and external injuries which resulted in her death approximately eight hours later. During the period from the time of those blows, the victim suffered pain so long as she remained conscious. During this same period Defendant and the child's mother failed to obtain medical care for her in order to alleviate the pain and possibly save her life because of fears associated with bruises on the face and body of the child and suspicions that might be aroused when they were seen by health care providers.

The Court further finds beyond a reasonable doubt that the killing of Malorie Conlee was especially atrocious in that she was extremely vulnerable because of her tender age and small size; that she did not have means to defend herself from the Defendant's blows or to avoid his attack.

III. The Court finds beyond a reasonable doubt that the following mitigating circumstances as enumerated in subsection 6 of §99-19-101, Mississippi Code of 1972, Annotated, as amended, exist:

A. That Defendant has no significant history of prior criminal activity; and

B. The age of the Defendant at the time of the occurrence, age 24 years.

The Court specifically finds beyond a reasonable doubt that none of the

other mitigating circumstances or factors in subsection (6) exist and that the evidence in this case revealed no other matter or matters relevant to the sentence to be imposed or the aggravating or mitigating circumstances as provided in subsection (1) of §99-19-101, Mississippi Code of 1972, Annotated, as amended.

The Court having considered the aggravating circumstances and the mitigating circumstances found to exist, and having weighed these factors each against the other, is of the opinion and finds beyond a reasonable doubt that the mitigating circumstances do not outweigh the aggravating circumstances and that the aggravating circumstances outweigh the mitigating circumstances in this case.

It is therefore the finding of this Court based upon the above finding of fact and consideration of the aggravating and mitigating circumstances that the Defendant, William M. Wilson, be sentenced to suffer death.

It is therefore the verdict of this Court, acting without a jury pursuant to the waiver by the State and the Defendant, as follows:

As to Count I in the indictment:

"The Court finds the defendant, William M. Wilson, should suffer death."

It is therefore the judgement and order of this Court that the Defendant, William M. Wilson, having been adjudged guilty of capital murder in the death of Malorie Conlee on his plea of guilty to said charge, be and he is hereby sentenced to suffer death by the administration of a substance or substances in the manner required by law at a time to be fixed in accord with §99-19-106, Mississippi Code of 1972, Annotated, as amended.

As to Count II of the indictment:

"It is the order of this Court that the Defendant serve a term of twenty (20) years in the custody of the Mississippi Department of Corrections. This sentence is to run consecutive to the sentence imposed in Count I in this cause."

C.P. 151-54.

On June 7, 2007, Wilson filed a post-trial Motion For Judgement of Acquittal JNOV

as to Sentence or in the Alternative for a New Penalty Phase Trial. C.P. 165-66. The motion was denied by the trial court on June 18, 2007. C.P. 170. Wilson is represented now on appeal by Andre' de Gruy of the Office of Capital Defense Counsel, and raises the following assignments of error for consideration by this Court:

1. THE TRIAL COURT ABUSED ITS DISCRETION AND ARBITRARILY AND CAPRICIOUSLY REFUSED TO ACCEPT WILSON'S GUILTY PLEA THEREBY PREVENTING WILSON FROM ACCEPTING A PLEA BARGAIN AGREEMENT THAT WOULD HAVE SPARED HIS LIFE OR IN THE ALTERNATIVE WILSON WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL RESULTING IN HIS LOSS OF THE PLEA BARGAIN ALL IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTIONS.

2. THE PROSECUTOR COMMITTED MISCONDUCT BY IMPROPERLY CROSS EXAMINING MITIGATION WITNESSES AND THEREBY DEPRIVED WILSON OF A FUNDAMENTALLY FAIR SENTENCING AND MANDATES HIS DEATH SENTENCE BE VACATED.

3. THE ADMISSION OF TESTIMONY BY DR. STEVEN HAYNE UNDERMINES THE RELIABILITY OF THE DEATH SENTENCE IMPOSED IN THIS CASE AND PRESENTS QUESTIONS OF IMPROPER EXPERT TESTIMONY AND INEFFECTIVE ASSISTANCE OF COUNSEL.

4. THE INTRODUCTION OF IMPROPER VICTIM IMPACT TESTIMONY VIOLATED THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION, ARTICLE 3, SECTIONS 14, 26, AND 28 OF THE MISSISSIPPI CONSTITUTION.

5. CUMULATIVE ERROR REQUIRES REVERSAL OF THE CONVICTION AND SENTENCE IN THIS MATTER.

As the following analysis demonstrates, each of the issues raised on appeal is procedurally barred from consideration and/or is without legal merit. Accordingly, Wilson's

guilty plea and sentence should be affirmed.

STATEMENT OF FACTS

On April 29, 2005, at about 6:15 a.m., Terry Bostick, a volunteer firefighter and EMR (Emergency Medical Responder) received a page from 911 that informed him a motorcycle had fallen on a child at a residence on State Park Road. Tr. 231. As Bostick lived nearby, he arrived at the residence within two to three minutes. Tr. 231. On arrival at the scene, Bostick found Malorie inside the house and not breathing. Tr. 231, 235. Bostick noted bruising on Malorie's neck and a large protrusion on her head that indicated to him that she was suffering from internal head injuries and brain swelling. Tr. 234. Bostick also noted that Malorie was warm to the touch as he began CPR. Tr. 233, 235-36. Additional responders began arriving and assisting. Bostick called for a helicopter to transport Malori to the hospital. Tr. 235. While preparing Malorie for the helicopter ride Bostick further observed more bruises on her body at differing levels of healing as well as burn marks on both of her feet and ankles. Tr. 236-37. It was Bostick's opinion that the information supplied to him by Wilson, regarding Malori's injuries, was not consistent with the actual injuries he observed on Malorie's body. Tr.237.

At the North Mississippi Medical Center, where Malori was transported, Deputy Robbie Gwin and Investigator Donna Franks Fincher of the Lee County Sheriff's Department advised Wilson of his rights pursuant to Miranda, at about 7:49 a.m., and proceeded to interview him regarding Malorie's injuries. Tr. 72. Wilson informed the deputies that he had

been working on his motorcycle and that it had fallen over onto Malorie, hitting her in the head and shoulder. Tr. 79. Wilson said he did not call the child's mother at work to inform her of the injury nor did he call 911 because he didn't think it was that bad of an injury. Tr. 80. Wilson stated that the child was barely responsive and did move some in a jerking fashion. Tr. 80. Additionally, he and the mother, after she had come home from working, also found a soft spot "mushy" area on Malorie's head to which they applied an ice pack. Tr. 80. He also reported that only one of Malorie's eyes would dilate when a light was shined into them. Tr. 80.

Wilson went on to state to the deputies that he had caused the bruising on Malorie's cheeks when he had "corrected" her and that the burns on her feet were the result of him leaving her unattended in the bath tub in either December or January. Tr. 80-81. Deputy Donna Franks Fincher wrote out the information provided by Wilson and had him read over it for accuracy. Wilson was asked to sign the statement if it was accurate and he did so.

On that same day at about 9:27 a.m. at the Lee County Sheriff's Office, Wilson was again interviewed after having been Mirandized. Tr. 91. Wilson gave the deputies essentially the same statement as he had given at the hospital. Tr. 91.

In the meantime Lieutenant Scottie Reedy of the sheriff's office obtained a search warrant and went back to the scene. Lieutenant Reedy took pictures and found that the version Wilson gave could not be true as there were still cobwebs on the motorcycle showing it had not moved. Nor were there any other indications that the motorcycle had actually fallen in any manner. Tr. 152.

A third interview of Wilson ensued at about 2:30 p.m. that day in Lieutenant Reedy's office. Tr. 150. Wilson again stated that the motorcycle had fallen and caused Malorie's head injuries. Tr. 160. However, Wilson's story began to change as he this time stated that when Malorie's feet were burned he had found her sitting down in the bath tub and had no explanation as to why her body was not burned as well. Tr. 160-61. Wilson then volunteered, "I'm going to tell you the truth now" and added that he had dropped Malorie on her head in the kitchen as he was carrying her to the bathroom to wash her after she had thrown up in the bed. Tr. 161.

After that interview of Wilson was complete, Malori's mother, Augustina Conner, informed Lieutenant Reedy that she didn't know why she was lying for Wilson in that he had told her he had hit Malorie in the head and had choked her. Tr. 107-08. With that information in hand as well as all of the other evidence gathered up to that point Wilson was questioned again at about 9:00 p.m. that day by Lee County Sheriff Jim Johnson and his Chief Deputy John Hall. Tr. 120-32.

After being once again advised of his Miranda rights, Wilson gave the details of Malorie's murder. Tr. 129, State's Exhibits 8 and 9. Wilson went on to confess that on that date at about 9:20 or 9:30 p.m., he discovered that Malorie had vomited "puked" in the bed. He saw that the vomit was in her hair and that he would wash it and bathe Malorie. As he was carrying her through the kitchen area of the trailer he reports that he dropped Malorie on her head. The child began to cry and would not stop crying. Wilson carried Malorie to the bathroom and sat her on the toilet where she continued to cry. Wilson then struck

Malorie in the head with his fist. He struck Malorie in the head again and then again. A total of three blows to the head. After inflicting the beating he ultimately placed Malorie on a pallette on the floor in the living room. As the night went on Wilson reports that while Malorie cried and moaned and moved her arms in a swimming type motion that he did not attempt to get medical help for her. Wilson also reported that Malorie uttered the words "ow" and "mommy" during this time frame. Wilson reports he went to sleep and upon waking it appeared Malorie was not responsive and this is when he finally called 911. State's Exhibits 8 and 9.

SUMMARY OF THE ARGUMENT

In his first issue, Wilson admits that there is no defect in his guilty plea to the capital murder charge on May 24, 2007. Wilson is barred from challenging his plea of guilty on direct appeal. Alternatively, there is no merit to Wilson's claim as he entered a knowing, informed and voluntary plea to the charge.

Wilson's second issue is procedurally barred from consideration as he failed to object to the questioning of his witnesses at trial and failed to bring forth the issue in his post trial pleadings. Alternatively, the issue is without merit and not plain error.

Wilson's third issue is barred from consideration as he fails to cite to relevant authority, nor does he present a cognizable claim for the Court's consideration.

Wilson's fourth issue of the prosecutor eliciting improper victim impact testimony is barred as there was no objection at trial and he did not bring the issue forward in his post trial

pleadings.

Wilson's final claim of cumulative error must fail as there was no individual error to accumulate to warrant reversal.

LEGAL ANALYSIS

I. WILSON'S GUILTY PLEAS WERE VALID AND BINDING UPON HIM.

Wilson first contends that the trial court erred by not accepting his attempt to plead guilty to capital murder on March 5, 2007.[1] On that date, Wilson informed the court that he was not satisfied with the performance of his attorneys in the handling of his case.

EXAMINATION BY THE COURT: (Continuing)

Q. Mr. Wilson, are you satisfied with the legal services and the advice given you by your attorneys?
A. No, sir.
Q. You are not?
A. No, sir.
Q. Very well. In what regard?
A. I feel like there could have been more done.
Q. I'm sorry?
A. I feel like there could have been more done. I don't think I can receive a fair trial. That's why I'm taking this plea.
Q. Mr. Wilson, one of the responsibilities that I have is to ensure that you do get a fair trial.
A. Yes, sir.
Q. And I will do all within my power to see that that is done.
A. Yes, sir.
Q. Now, if you tell me that you are not satisfied with the services that your attorneys have given you, I'm not going to accept your plea. You have just got through telling me that.

---

[1]Wilson does not argue that the trial court erred in refusing to accept his guilty plea to child abuse in Count II of the indictment.

A. Yes, sir. I'm not totally satisfied, no, sir I'm not.
Q. Well, based on the circumstances, I assume they have spent time talking with you about the evidence in this case?
A. Not much.
THE COURT: Well all right. Mr. Wilson, I'm returning you to the custody of the Lee County. This matter will be placed on the docket for trial at a later time.
MR. YOUNG: Your Honor, if we can get with you, we would like to pick a date for a trial of this matter in which we will seek the death penalty.
THE COURT: Very well.
All right. Mr. Sheriff, he's in your custody.
The matter will be in recess until tomorrow at 9:00.

Tr. 204–05.

Thereafter, on May 24, 2007, the court reconvened to allow Wilson to offer his pleas of guilty to the indictment once again and with the full understanding that the State was not offering a sentencing recommendation. Tr. 213-14.

Despite Wilsons declaration that "He is not appealing and raises no claim here regarding the guilty plea entered on May 24, 2007." (Appellant's Brief at 5). He now inappropriately attempts to do that which he cannot; that is to appeal his properly accepted plea of guilty. As Wilson knowingly and voluntarily pleaded guilty to the charges in the indictment, the validity of that plea may not be challenged on direct appeal. *Loden v. State*, 971 So.2d 548, 561 (Miss.2007); *see also* Miss.Code Ann. § 99-35-101 (Rev.2007).

In *Loden* this Court detailed the requirements to determine if a guilty plea was intelligently and voluntarily made, and therefore binding and not subject to attack on direct appeal:

> ¶ 60. While there is "not a per se rule prohibiting collateral attack on a plea in all circumstances, simply because the transcript on its face reflects recitation

of voluntariness and awareness of the consequences[,]" *Baker v. State*, 358 So.2d 401, 403 (Miss.1978), there is " a strong presumption of validity of anyone's statement under oath." *Holt v. State*, 650 So.2d 1267, 1270 (Miss.1994) (emphasis added). According to this Court:

> [a] plea of guilty is not binding upon a criminal defendant unless it is entered voluntarily and intelligently. *Myers v. State*, 583 So.2d 174, 177 (Miss.1991). A plea is deemed "voluntary and intelligent" only where the defendant is advised concerning the nature of the charges against him and the consequences of the plea. *See Wilson v. State*, 577 So.2d 394, 396-97 (Miss.1991). Specifically, the defendant must be told that a guilty plea involves a waiver of the right to trial by jury, the right to confront adverse witnesses, and the right to protection against self-incrimination.... Rule 3.03 of the Uniform Criminal Rules of Circuit Court Practice additionally requires, inter alia, that the trial judge "inquire and determine" that the accused understands the maximum and minimum penalties to which he may be sentenced.

Alexander v. State, 605 So.2d 1170, 1172 (Miss.1992). Furthermore, this Court has held "that when the trial court questions the defendant and explains his rights and the effects and consequences of the plea on the record, the plea is rendered voluntary despite advice given to the defendant by his attorney." *Harris v. State*, 806 So.2d 1127, 1130 (Miss.2002). The record clearly reflects that Judge Gardner expressly informed Loden of the charges against him; the consequences of his guilty plea, including the minimum and maximum penalties in sentencing; and the implications of waiving his right to trial by jury, right to confront adverse witnesses, and right to protection against self-incrimination. Furthermore, Loden affirmatively stated under oath that his guilty pleas were "free and voluntary." Thereafter, Loden pleaded guilty to all charges. As such, this Court finds that the circuit court was not "clearly erroneous" in finding that Loden's guilty plea was "knowing and voluntary." *Brown*, 731 So.2d at 598.

Loden at 561.

Just as in *Loden*, Wilson was informed by the judge that his plea involved the waiver of a jury. Tr.179, 207; that Wilson was waiving his right to confront witnesses and the right

to protect himself against self-incrimination. Tr.182-83, 184; and the judge made sure that Wilson was informed and understood the minimum and maximum sentences he was facing. Tr. 211-12.

As Wilson entered his pleas intelligently and voluntarily in the circuit court he is not entitled to attack the pleas here on direct appeal. If any issue for consideration does exists for this Court to review regarding the guilty pleas they are better brought forward by Wilson, if at all, through The Uniform Post Conviction Collateral Relief Act Miss.Code Ann. § 99-39-1, *et seq.*

Wilson's attempt to attack his guilty pleas on direct appeal is barred and as such this issue is due to be dismissed.

II. WILSON'S CLAIM THAT THE PROSECUTION ENGAGED IN MISCONDUCT IS PROCEDURALLY BARRED.

Wilson next contends that the prosecutor engaged in misconduct by improperly cross-examining his mitigation witnesses during the penalty phase and therefore the death sentence must be vacated. Wilson argues the prosecution questioned defense mitigation witnesses, primarily his former teacher Jan Stembridge, concerning Wilson's past drug abuses. Wilson argues error by claiming there was nothing in the record, as he found it prior to filing his appeal brief, to support the prosecutions questions.

Wilson did not offer any objection to the prosecutor's cross-examination of any witness nor did Wilson raise the issue for consideration in his motion for new trial or JNOV and is therefore barred from presenting the argument for the first time on appeal. As to this

issue this Court has previously held:

> ¶ 53. Watts next raises four instances of alleged prosecutorial misconduct arising from comments made during the closing arguments of both the guilt and sentencing phases of his trial. He contends that the cumulative effect of these comments warrants reversal of his case. Watts made no objection to the comments at trial and the issue of prosecutorial misconduct was not raised in his motion for a new trial. Despite his assertion that prosecutorial misconduct must be reviewed on appeal despite counsel's failure to object, FN6 the assignment of error is procedurally barred. *Jackson*, 684 So.2d at 1226; *Chase*, 645 So.2d at 854. As this Court explained in *Jackson*, where it was alleged that the prosecutor made improper comments during both opening and closing arguments as well as while examining witnesses, but no objections were raised at trial, " '[t]he defendant who fails to make a contemporaneous objection must rely on plain error to raise the assignment on appeal.' " *Id.* at 1226 (quoting *Foster v. State*, 639 So.2d 1263, 1289 (Miss.1994)). Moreover, the contemporaneous objection rule remains applicable in capital murder cases. *Evans v. State*, 1997 WL 562044, 725 So.2d 613 (Miss.1997); *Williams v. State,* 684 So.2d 1179, 1203 (Miss.1996).
>
> > FN6. *Cabello v. State*, 471 So.2d 332 (Miss.1985), upon which Watts relies for this proposition, does not even suggest that alleged prosecutorial misconduct must be addressed on appeal even if no objections were made during trial. Rather, the Court merely addressed the assignment of error quite briefly, observed that no objection had been made at trial and found the Appellant's proposition to be without merit. Id. at 346.

Watts v. State, 733 So.2d 214, 232-33 (Miss.1999).

As Wilson declined to object to the cross-examination conducted by the prosecution during the sentencing hearing and also did not raise the issue in the motion for a new trial or JNOV he is procedurally barred from raising such at this time on appeal. *Id. See also Moawad v. State*, 531 So.2d 632, 634 (Miss.1998) (trial judge cannot be put in error on matter not presented to him for decision); *Walker v. State*, 823 So.2d 557 (Miss.App.2002) (failure to raise issue at trial level bars consideration at appellant level). Therefore this

assignment of error is procedurally barred from review by this Court. *Howard v. State,* 507 So.2d 58, 63 (Miss.1987).

Without waiving the procedural bar the appellee addresses the possibility of plain error as to this issue. This Court has set the standard for a showing of plain error as an error so fundamental that it creates a miscarriage of justice. Error is plain when it violates the substantive rights of a defendant. *Dixon v. State*, 953 So.2d 1108, 1116(¶ 22) (Miss.2007). The circumstances surrounding this claim by Wilson can not rise to the level of plain error as all parties involved in the hearing were fully aware of the factual basis for the complained of questions, those of past drug abuse posed to the witnesses, and were known to all parties.

Prior to the taking of Wilson's guilty plea the court below ordered that the mental evaluation report conducted on Wilson be reviewed in detail by Wilson and his attorneys and that a copy of the report be made a part of the record.[2] Tr. 38-40. It is not possible that Wilson's substantive rights were violated and no miscarriage of justice was applicable on this issue as it is clear that each question asked of the witnesses and complained of here by the appellant was covered in the mental evaluation report. This issue is procedurally barred and alternatively without merit as it does not rise to the level of plain error and is therefore due to be dismissed.

---

[2]For reasons unknown, the mental evaluation report was not included in the record despite the court's granting of the motion to do so. Tr. 40. However, the report is referenced in the questioning of Wilson prior to his plea and is included as an exhibit in Wilson's post conviction motion filed in the Lee County Circuit Court. *See* Petition for Post-Conviction Relief, CV08-074GL, Exhibit 5, attached hereto as Appendix "A".

III. WILSON'S CLAIM THAT DR. HAYNE'S TESTIMONY SOMEHOW UNDERMINES THE SENTENCE'S RELIABILITY IS PROCEDURALLY BARRED.

In his next issue raised, Wilson contends that there are issues not fully developed for direct appeal review regarding the testimony of Dr. Steven Hayne and that he may present those arguments in a post-conviction relief motion in this case.

Wilson did not offer any objection to the acceptance of Dr. Hayne as an expert in the area of forensic pathology and besides a general objection to the photographs relied upon by Dr. Hayne in his testimony there was no objection at all. Tr. 293-94. Nor did Wilson raise any issue for consideration regarding Dr. Hayne's testimony in his motion for new trial or JNOV and is therefore barred from presenting the argument for the first time on appeal. *See Moawad*, 531 So.2d 632, 634 (Miss.1998) (trial judge cannot be put in error on matter not presented to him for decision); *Walker*, 823 So.2d 557 (Miss.App.2002) (failure to raise issue at trial level bars consideration at appellant level). Therefore this assignment of error is procedurally barred from review by this Court. *Howard,* 507 So.2d 58, 63 (Miss.1987).

Alternatively, without waiving any applicable bar , an examination of the merits of the claim shows there is no merit. Wilson confines his contention here on direct appeal to the nonsensical argument that merely because Dr. Hayne was involved in this case that the death sentence should be vacated. Wilson takes issue that Dr. Hayne listed, in answer to the question "what is it you do for a living?" to working as the Chief State Pathologist for the Department of Public Safety among other things. Relying upon the concurring opinion of Justice Diaz, in *Edmonds v. State*, 955 So.2d 787, 802-03 (Miss.2007), Wilson determines

that Dr. Hayne does not qualify to hold such office. What Wilson ignores is that Dr. Hayne was tendered and accepted, without objection, as a forensic pathologist, not as the Chief Pathologist of the State. Even Justice Diaz, in the concurring opinion, concedes that the majority in *Edmonds* finds "Dr. Hayne qualified to proffer expert opinions in forensic pathology". At 802, ¶ 46.

The majority in *Edmonds* remanded for a new trial based in part on its determination that Dr. Hayne testified outside of his area of expertise and had no problems with Hayne's testimony that fell squarely inside the realm of forensic pathology. At 792, ¶ 8.

Wilson does not question Dr. Hayne's testimony regarding Malorie's autopsy results that are consistent with the information confessed to by Wilson as to the pain, history of injuries, and fatal beating he inflicted upon the child. Tr. 291-316. As Dr. Hayne has been found by this Court to be a qualified expert in the field of forensic pathology and Wilson has failed to present any credible evidence to the contrary in support of his argument this issue is due to be dismissed. *Duplantis v. State*, 708 So.2d 1327, 1339 ¶ 46 (Miss.1998) (Dr. Hayne is unquestionably qualified to testify in our courts as a forensic pathologist).

Additionally, *Edmonds* is clearly not applicable to this case and as such Wilson has failed to cite any relevant authority in support of his argument and is due to be dismissed. *Byrom v. State*, 863 So.2d 836, 863 (Miss.2003). Wilson only adds vague references to newspaper articles about unnamed individuals and speculatory references to state legislation.

IV. WILSON'S CLAIM OF IMPROPER VICTIM IMPACT TESTIMONY IS PROCEDURALLY BARRED.

Wilson next contends that the prosecutor engaged in misconduct by improperly eliciting a victim impact witness' view as to proper punishment for Wilson and therefore the death sentence must be vacated.

Wilson did not offer any objection to the prosecutor's questioning of Malorie's paternal grandfather Bennie Conlee, nor did he raise any objection to the statement made by Mr. Conlee. Neither did Wilson raise the issue for consideration in his motion for new trial or JNOV and is therefore barred from presenting the argument for the first time on appeal. *See Moawad*, 531 So.2d 632, 634 (Miss.1998) (trial judge cannot be put in error on matter not presented to him for decision); *Walker*, 823 So.2d 557 (Miss.App.2002) (failure to raise issue at trial level bars consideration at appellant level). Therefore this assignment of error is procedurally barred from review by this Court. *Howard,* 507 So.2d 58, 63 (Miss.1987).

Alternatively, and without waiving any applicable bar, this issue is without merit. Victim impact evidence is admissible at sentencing. The United States Supreme Court endorsed the use of victim impact testimony in *Payne v. Tennessee*, 501 U.S. 808 (1991):

> Victim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities. We think the Booth court was wrong in stating that this kind of evidence leads to the arbitrary imposition of the death penalty. In the majority of cases, and in this case, victim impact evidence serves entirely legitimate purposes. In the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief. *See Darden v. Wainwright*, 477 U.S. 168, 179-183, 106 S.Ct. 2464, 2470-2472, 91 L.Ed.2d 144 (1986).

> Courts have always taken into consideration the harm done by the defendant in imposing sentence, and the evidence adduced in this case was illustrative of the harm caused by Payne's double murder.
>
> We are now of the view that a State may properly conclude that for the jury to assess meaningfully the defendant's moral culpability and blameworthiness, it should have before it at the sentencing phase evidence of the specific harm caused by the defendant. "[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family." *Booth*, 482 U.S. at 517, 107 S.Ct. at 2540 (WHITE, J., dissenting) (citation omitted). By turning the victim into a "faceless stranger at the penalty phase of a capital trial," *Gathers*, 490 U.S. at 821, 109 S.Ct. at 2216 (O'CONNOR, J., dissenting), Booth deprives the State of the full moral force of its evidence and may prevent the jury from having before it all the information necessary to determine the proper punishment for a first-degree murder.

Payne, Id. at 825.

> The Fifth Circuit has adopted the rationale of Payne:
>
> > In *Payne v. Tennessee*, the Supreme Court held that victim impact evidence is admissible to "show [...] each victim's uniqueness as an individual human being." 501 U.S. 808, 823-27, 111 S.Ct. 2597, 115 L.ED.2d 720 (1991). "Victim impact evidence is [a] method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities." *Id.* at 825, 111 S.Ct. 2597. Evidence "about the victim and about the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed. There is no reason to treat such evidence differently than other relevant evidence is treated." *Id.* at 827, 111 S.Ct. at 2609. Victim impact evidence is admissible unless it "is so unduly prejudicial that it renders the trial fundamentally unfair" in violation of a defendant's Due Process rights. *Id.* at 825, 111 S.Ct. 2597; *see also Jones v. United States*, 527 U.S. 373, 401-02, 119 S.Ct. 2090, 144 L.Ed.2d 370 (1999).

U.S. v. Bernard, et al., 299 F.3d 467, 480-81 (5th Cir. 2002) (emphasis added) (noting that improper characterizations of the defendant by the victims and requests for the jury to

sentence the victim to death are the types of evidence that are considered inadmissible on this subject but, nonetheless, holding the error harmless).

The Mississippi Legislature and this Court also have recognized the necessity of victim impact testimony. This Court adopted the Payne holding in *Hansen v. State*, and noted, "A state may legitimately conclude that evidence about the victim and about the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed." *Hansen*, 592 So. 2d 114, 146 (Miss. 1991), cert. denied, 112 S.Ct. 1970, 118 L.Ed. 2d 570 (1992). Miss. Code Ann. Section 99-19-157(2)(a), while not specifically enumerating capital murder cases, allows for an oral victim impact statement at "any sentencing hearing" with the permission of the courts.

The State concedes that victim impact testimony is not limitless in its admissibility. However, in the case at hand the comment of Bennie Conlee amounts, at most, to harmless error. The facts in this case are similar to *U.S. v. Bernard,* 299 F.3d 467, 480-81 (5th Cir. 2002), in which the Fifth Circuit held that any improper characterizations of the defendant and requests for the jury to sentence the victim to death can constitute harmless error. In *Bernard*, the Fifth Circuit took issue with several victim impact statements in which the defendants were characterized as hard hearted individuals, who recklessly stole the lives of two innocent children. One witness asked the defendants why they committed the murders, stating, "there was no profit to be gained, no angry exchange, it was just a useless act of violence and a total disregard of life." Another told the defendants that they needed to be afraid because hell was a real place. *Id.*

The Fifth Circuit held that such statements did constitute Booth error. However, it declined to reverse the convictions or sentences, holding that such brief statements did not unduly prejudice the jury, especially in light of the facts of the crime. The court also held that because the statements were irrelevant to the jury's sentencing determination, they could not have prejudiced the jury against the defendants. Finally, the court noted that the jury was instructed not to be swayed by passion, sympathy or prejudice, therefore, any error also was cured by the giving of such instruction. "Taken in context, the inadmissible portion of the victim impact testimony was short and minor compared to the crimes and the pathos of the admissible impact on the parents." *Bernard, Id.* at 481.

In this case, Bennie Conlee made a short comment in response to questioning during his brief testimony on direct. It is impossible to think the court, sitting as the trier of fact, would have been influenced by this one statement to the extent that he would have based a capital sentence entirely on it. Also, a look at the mountain of the evidence reviewed and detailed by the trial judge in formulating his well reasoned sentencing Order shows the sentence to have been imposed without the prejudice of any improper influences. As such, even if this issue were not procedurally barred, in light of the facts of this case, the objectivity and discipline displayed by the judge, and the totality of Mr. Conlee's testimony, this one statement was clearly harmless if it were error at all. This issue is due to be dismissed.

V. THERE WAS NO CUMULATIVE ERROR IN THIS CASE.

Finally, Wilson argues that the cumulative error in this case warrants reversal.

However, he has presented no list nor does he point to specific errors which should be cumulated or aggregated to show error. This Court has condemned this practice. *See McGilberry v. State*, 741 So.2d 894, 924, ¶ 124 (Miss.1999); *Foster v. State*, 639 So.2d 1263, 1303 (Miss.1994). The State respectfully submits that there is no substantial error in this case, cumulative or otherwise. Moreover, to the extent that the issues raised by Wilson are barred, this issue is also barred. That is, this Court has held that capital murder convictions and death sentences will not be reversed on grounds of cumulative error, where the alleged errors, if any, are procedurally barred. *See Simmons v. State*, 805 So.2d 452 (Miss.2001)(citing *Doss v. State*, 709 So.2d 369, 401 (Miss.1996)). Without waiving any applicable bars, the substance, if any, of each issue raised by Wilson has been refuted by substantial authority outlined above. Based on this authority, the State submits that Wilson's assignments of error on appeal are without merit. "Where there is no reversible error in any part, ... there is no reversible error to the whole." *Doss*, 709 So.2d at 400 (quoting *McFee v. State*, 511 So.2d 130, 136 (Miss.1987)).

Alternatively, however, even if this Court were to find errors to exist, the State submits that such errors are not substantial enough to warrant reversal.

> A criminal defendant is not entitled to a perfect trial. *Sand v. State*, 467 So.2d 907, 911 (Miss.1985). The evidence of guilt in this case was overwhelming and . . . our independent review of the sentencing phase reveals no errors. [The defendant/appellant] received all that he was entitled to a fair trial. This assignment of error is without merit.
>
> *See McGilberry v. State*, 741 So.2d 894, 924 (Miss.1999).

Wilson's argument to the contrary is barred, and, alternatively without merit and as

such is due to be dismissed.

CONCLUSION

For the above and foregoing reasons, the State submits that appellant's guilty plea to capital murder and sentence of death should be affirmed.

Respectfully submitted,
JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

MARVIN L. WHITE, JR.
SPECIAL ASSISTANT ATTORNEY GENERAL

PAT MCNAMARA
SPECIAL ASSISTANT ATTORNEY GENERAL
Counsel of Record
Miss. Bar No. 99838

BY: Pat McNamara
PAT MCNAMARA

OFFICE OF THE ATTORNEY GENERAL
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680

CERTIFICATE

I, Pat McNamara, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to the following:

Honorable Thomas J. Gardner, III
Circuit Court Judge
1st Circuit Court District
P.O. Box 1100
Tupelo, Mississippi 38802-1100

Honorable John R. Young
District Attorney
P.O. Box 212
Corinth, Mississippi 38834

Honorable Andre' de Gruy
Office of Capital Defense Counsel
510 George Street., Suite 300
Jackson, Mississippi 39202

This the 24th day of November, 2008.

PAT MCNAMARA

APPENDIX "A"

Exhibit 5

W. Criss Lott, Ph.D.
Clinical Psychologist
969 Lakeland Dr.
Jackson MS 39216
Tel: 601-200-3108 Fax: 601-200-3109

January 17, 2007

Honorable Thomas J. Gardner
Circuit Court Judge, District 1
P.O. Drawer 1100
Tupelo, MS 39902

Re: William M. Wilson
Cause #CR05-635

Dear Judge Gardner:

I am writing to provide the results of my outpatient forensic mental evaluation of William Wilson. Mr. Wilson is a 26 year-old Caucasian man who was evaluated at my office on 6 January 2007.

IDENTIFICATION/PURPOSE OF EVALUATION:

Mr. Wilson was sent on a Court Order, on motion of the defendant, for a forensic mental evaluation to determine the following:

1. The defendant's competency for trial, whether the defendant is, for the purpose of determining whether, by reason of some defect, disease, or condition of the mind or memory, able to comprehend the nature of the charges against him and rationally aid or assist counsel in his defense, and
2. The defendant's degree of criminal responsibility; whether or not he had the mental capacity to distinguish between right and wrong in relation to the alleged act; and
3. Any and all conditions relevant to mitigation; and
4. Any recommendation of disposition.

The Order also stipulated that a copy of the report should be provided to the Court.

NOTIFICATION:

Mr. Wilson was informed of the non-confidential nature of this evaluation. He was also informed that a copy of the report would be provided to his attorney, to the Court, and to the District Attorney's office. He was informed that he did not have to say anything that might hurt his case in a Court of Law. Mr. Wilson read and signed the statement and did not appear to have any difficulty understanding this notification.

CHARGES:

According to the Indictment, Mr. Wilson is charged with one count of murder in the death of Malorie Conlee, a child under the age of three, on or about 29 April 2005. He is also accused of committing felonious child abuse by severely burning the feet of Malorie Conlee.

According to a Lee County Sheriff's Department Criminal Investigation report by Investigator Donna Franks, dated 2 May 2005, on 29 April 2005 deputies received a call stating that a child was not breathing. The child was reported to have "severe head injuries." Investigator Franks conferred with a physician at the hospital who reported that, "the baby was deceased and the initial impression was the child died from trauma to the head." The doctor also noted that, "the baby had injuries in several stages of healing and also burns to the feet that were old but seemed to be consistent with child abuse."

Inv. Franks reported that both the mother of the baby and Mr. Wilson initially reported that a motorcycle had fallen on the child. During later questioning, Inv. Franks said that Mr. Wilson changed his story to indicate that the baby fell from his arms.

Inv. Franks report also noted the following:

> Around 10:30 pm Friday April 29th, William Matthew Wilson confessed to beating the baby in the head with his fist. Both Wilson and Connor knew the baby was seriously injured due to the baby have [sic.] seizures and not being able to close her eyes. They administered eye drops to the baby's eyes to keep them from drying out and ice packs to the head for swelling.

> The baby was dead when they awakened around 5:00 am on Friday morning April 29th. Wilson stated he tried to perform CPR. Mother stated he did not know how to do CPR but tried for 45 minutes to one hour. Wilson finally called 911 when they realized the baby was dead.

Mr. Wilson gave a statement to investigators on 29 April 2005 at 15:18 hours in which he noted:

> The reason we didn't take Malorie to the hospital last night was because of the bruises on her cheek where I grabbed her too hard and I was afraid. That's not all the reason. We didn't think Malorie was hurt that bad.

Mr. Wilson provided an additional statement to investigators on 29 April 2005 at 2100 hours. He was asked by Sheriff Jim Johnson, "Do you believe right now that this child needed to go to the hospital last night?" Mr. Wilson replied, "Yes, sir. I do now." The Sheriff asked, "Do you think what you did was wrong?" Mr. Wilson replied, "Yes, sir." Mr. Wilson also added, "I'm sorry. Uh...I have a temper problem that I might need help with. Uh...you know...I never meant for none of this to happen. It's just....I don't know...sometimes you just....you do stuff without thinking about the consequences."

INFORMATION REVIEWED:

1. Court Order
2. Indictment
3. Capias
4. Transcript of 9-1-1 tape dated 29 April 2005
5. Statement of William Wilson dated 29 April 2005 at 0927 a.m.
6. Transcript of Statement of William M. Wilson on 29 April 2005 at 2100 hours
7. Transcript of Statement of William M. Wilson on 29 April 2005 at 1518 hours
8. Lee County Sheriffs Office Information Booking Report
9. Mississippi Department of Public Safety Criminal History Reporting Form
10. Justice Affidavit
11. Warrant
12. Lee County Criminal Investigation Report dated 2 May 2005
13. Suicide Prevention Screening Guidelines for William Wilson dated 29 April 2005
14. Handwritten Statement of William Wilson
15. Lee County Radio Station Log dated 29 April 2005

16. Waiver of Rights signed by William Wilson dated 29 April 2005 at 1430 hours
17. Waiver of Rights signed by William Wilson dated 29 April 2005 at 0927 a.m.
18. Waiver of Rights signed by William Wilson dated 29 April 2005 at 2055 hours
19. Affidavit for Search Warrant
20. Underlying Facts and Circumstances
21. Lee County Sheriffs Office Information on Augustina C. Connor
22. Justice Affidavit for Augustina Connor
23. Warrant for Augustina Connor
24. Certification for Initial Appearance for Augustina Connor
25. Diagram of Home
26. Burn Safety: Hot Water Temperature Guidelines
27. Report of Autopsy for Malorie I. Conlee by Steven Hyne dated 29 April 2005
28. Photos of Malorie Conlee
29. Statement by Tina dated 29 April 2005
30. Letter to Tina from Momma Joan dated 13 May 2005
31. Letter to the family dated 6 May 2005
32. Lee County Investigators Report dated 1 May 2005
33. Statement of Rights signed by Augustina Connor dated 29 April 2005
34. Death Certificate for Malorie Conlee dated 29 April 2005
35. Birth Certificate for Malorie Conlee dated 11 February 2003
36. Statement of Augustina Connor dated 29 April 2005 at 4:55 p.m.
37. E-mail to Sheriff Johnson from Bennie Conlee dated 4 May 2005
38. E-mail to Sheriff Johnson from Gregory Connor dated 18 May 2005

I also obtained additional information from his mother, Nancy McGhee, his supervisor, Robert Camp, and his football coach, Michael Bradley. Mrs. McGhee reported that Mr. Williams had been interviewed by staff with the Office of Capital Defense. I contacted Mr. DeGruy with the Office of Capital Defense and he said the material his office had collected had been turned over to Mr. Wilson's attorneys and this information was not available at the time of this report.

BACKGROUND INFORMATION:

Mr. Wilson reported that he was born on 17 September 1980 in Amory, Mississippi. He said that he is the first of three siblings; he has two brothers, Bradley age 23, and Mason age 12. He reported that his 46 year-old mother, Nancy McGhee is a transcriptionist at the hospital. He said that his 49 year-old father, William Wilson, works for Mississippi Fire Equipment as a sales person. He reported that his parents divorced and his stepfather, Dale McGhee, is 49 years-old and is a contractor. He said

that his stepmother, Barbara Wilson, works at a furniture factory.

Mr. Wilson reported that he has never married and he said that he has no children. He reported that he was living in Moreville with his girlfriend, Augustina Connor and the victim Malorie Connor, at the time of his arrest.

FAMILY PSYCHIATRIC HISTORY:

Mr. Wilson reported no family history of mental retardation or mental illness. He also reported no history of substance abuse.

EDUCATIONAL HISTORY:

Mr. Wilson reported that he has an 11th grade education and last attended Moreville High School. He said that he had attended regular classes. He said that his grades ranged from A's to F's. He noted that he had failed English. He said that he was held back in the 2nd grade because of his poor reading skills. He said that he was suspended a couple of times in the 10th grade, but denied ever being expelled from school.

Mr. Wilson reported that he played football in middle school. He said that he had played fullback, middle linebacker, and defensive end. He said that he had never attended college. He said that he had quit school and attempted the GED, but he did not pass all of the classes.

EMPLOYMENT HISTORY:

Mr. Wilson reported no military history. He said that he began working at Kroger at the age of sixteen. He said that he had worked with his stepfather during the summers as a construction worker. He said that his longest employment had been with Cole Equipment, where he had worked for three years until the time of his arrest. He said that he was building hydraulic fitness equipment.

Mr. Wilson said that he had never been fired from a job. He also said that he had never received any Workers Compensation or Disability benefits and he denied ever filing a personal injury claim.

LEGAL HISTORY:

Mr. Wilson reported no contact with Youth Court or DHS during childhood, and his

mother corroborated these facts. He said that he was arrested for possession of paraphernalia on a couple of occasions in 1998 and 1999. He said that he was arrested for a DUI / Other in 2003. He also said that he had been arrested for possession of marijuana in 2003 and received a fine.

He reported that the instant offense occurred 29 April 2005. He said that he had been charged with capital murder and said that he was "accused of capital murder in the death of Malorie Conlee." He said that he was accused of "blunt force trauma to the head and striking her head with my hand."

Mr. Wilson said that he had not had any reprimands during his incarceration, and the transporting deputy reported that Mr. Wilson had not been a management problem. It should be noted that no NCIC or local arrest information was available at the time of this report.

MEDICAL/ DEVELOPMENTAL HISTORY:

Mr. Wilson reported no major childhood illnesses or injuries. He denied any history of abuse or neglect. He said that he had problems with his vision and noted that he was nearsighted and wore glasses.

He reported no history of seizures, but said that he was involved in a motor vehicle accident in 1998. He said that he was traveling 25 mph and he was hit head-on by another car that was traveling 80 mph. He said that he had "a severe laceration on my left knee, and lost half of my kneecap on my right knee." He said that he was hospitalized for approximately one week. He did not report having any serious head injuries during this accident. Mr. Wilson also reported that he had been diagnosed with a degenerative disc disease in 2003 and he complained of occasional back pain, and his mother corroborated these facts.

Mr. Wilson reported that he had been receiving medication for anxiety since his arrest and he said that he had received Paxil previously. He said that this medication was discontinued because it caused headaches. He reported no known allergies to medication. Mr. Wilson also noted that he had not been taking any type of medication prior to his arrest and incarceration.

DAILY/ SOCIAL ACTIVITIES:

Mr. Wilson described his relationship with his family positively. He noted that his

parents had divorced when he was approximately two years old. He said that he had a very good childhood. He said that he was raised by his mother and commented, "I always got everything I wanted." He said that his mother had remarried when he was approximately 12 years-old and he lived between his father and his mother for several years. He described his relationship with his stepfather very positively.

Mr. Wilson described his relationship with his girlfriend positively. He said that he was assisting with domestic chores and noted that he was helping cook and clean and helped to care for her child. He said that he generally would get up at approximately 4:30 in the morning and would be at work by 6:00 a.m. He said that he would work during the day and then spend time with his girlfriend and family after work. He said that he was generally in bed by 10:30 p.m. He said that he would see his mother three times a week and would see his father approximately once a month. He described his relationship with his friends and family members in the community very positively.

He said that he enjoyed spending his leisure time working in the yard and working on his grandfather's property. He also said that he enjoyed fishing and playing video games. He said that he also enjoyed gambling and noted that he enjoyed going to Tunica to the boat. He said that he and his girlfriend and family would also go out and eat occasionally.

PSYCHIATRIC HISTORY:

Mr. Wilson reported no contact with mental health professionals prior to his arrest. He said that he had never received medication for emotional or behavioral reasons and had never received psychological testing, and his mother corroborated these facts.

DRUG AND ALCOHOL USE HISTORY:

Mr. Wilson reported that he began drinking at the age of fourteen. He said that he was drinking heavily by the age of 23. He said that he was drinking a fifth every two days. He said that he drank this heavily for approximately six months. He said that he had stopped drinking and now only drinks approximately once a month, but denied any excessive alcohol use. He said that he began smoking marijuana around the age of fourteen. He said that by the age of 18 he was smoking a quarter to an ounce of marijuana daily. He said that he would occasionally smoke up to a quarter pound a week. He said that for the past two years prior to his arrest, he was smoking one half to one ounce a week. He said that the marijuana he had smoked had never been laced or dipped in any type of fluids.

He reported that he had used crystal methamphetamine from the age of 20 to 22. He said that he was using a gram every one to two days and he noted that he was smoking this substance. He said that he also used cocaine during the ages of 20 to 22, and he was using a half an ounce of cocaine every two weeks. He said that he had tried LSD eight or nine times and had tried Ecstasy four or five times. He said that he had also used pain pills on a few occasions, including Lortab, Percocet, Xanax, Klonopin, and Valium.

He denied any history of intravenous drug use. He also reported no history of treatment for substance use. He said that his drug of choice had been marijuana.

MENTAL STATUS EVALUTION:

Mr. Wilson presented as a well-nourished, Caucasian male. He reported that he is 5 feet 8 inches tall and weighs 191 pounds. He was neatly groomed. He had a neatly trimmed moustache and goatee. He was at all times pleasant and cooperative throughout the evaluation and appeared to be putting forth a genuine effort. He had a tattoo of a number 7 on his arm. He said that this was a lucky number and that he liked to gamble in Tunica on the boats.

He was alert, attentive and responded promptly to questions. He was precisely oriented. His speech was appropriate and at all times relevant and goal-directed. There was no indication of any expressive or receptive language deficits.

His objective expression of emotion appeared appropriate to the situation. He appeared concerned about his current legal situation and expressed concern about the victim and her family. He described his mood as, "O.k., I've got God in my life now." He described his sleep as poor, but noted no problems with his appetite. He said that he had gained thirty pounds since his arrest. He denied any suicidal thoughts or gestures. He specifically denied trying to harm himself since his incarceration. He also denied any history of manic behavior, although he said that while using drugs and alcohol there had been periods when he had been up for several days. He denied any manic behavior when not using drugs or alcohol.

Mr. Wilson laughed broadly when asked if he ever saw anything that other people did not see, such as little green men. He denied any history of unusual or bizarre perceptions. He specifically denied ever hearing voices telling him to harm himself or others. He denied ever believing that he had any special powers or abilities and he

noted no unusual fears or preoccupations.

His recent, remote and immediate memory appeared intact. He did not appear to have any difficulty recalling childhood information or current personal information.

ASSESSMENT RESULTS:

Mr. Wilson was administered the Wechsler Adult Intelligence Scale - III (WAIS-III), the Wide Range Achievement Test - IV (WRAT-IV), the Minnesota Multiphasic Personality Inventory-II (MMPI-II), and the Green Word Memory Test (WMT). He approached the testing without hesitation and appeared to put forth a maximum effort throughout the assessment. The intellectual and achievement testing was administered by Jean Boudreaux, Ph.D.

On the WAIS-III he obtained the following scores:

VERBAL SUB-TESTS	SS	PERFORMANCE SUB-TESTS	SS
Information	12	Picture Completion	12
Similarities	9	Coding	7
Arithmetic	7	Picture Arrangement	6
Vocabulary	9	Block Design	8
Comprehension	9	Matrix Reasoning	14
Digit Span	8	Symbol Search	8
Letter-Number Sequencing	9		

Verbal IQ:	93	Verbal Comprehension Index:	100
Performance IQ:	95	Perceptual Organization Index:	107
Full Scale IQ:	94	Working Memory Index:	88
		Processing Speed:	86

Mr. Wilson's intellectual scores fall in the average range with no significant difference noted between verbal and non-verbal performance. Analysis of the index scores revealed a relative weakness in terms of his immediate visual and verbal memory skills.

On the WRAT-IV he obtained a Reading Standard Score of 92. This score falls at an 11.0 grade level.

Mr. Wilson was administered the Green Word Memory Test, a test designed to assess

jury determined the verdict, knew the number of people on a jury and knew the number required to reach a verdict. He understood that witnesses could "testify," and the police were involved in the "investigation." He understood the role of psychologists or psychiatrists would be "in evaluations."

Mr. Wilson appeared to understand what could be used as evidence in Court, including "medical evidence and statements." He understood that all twelve jurors would have to find him guilty in the guilt phase, and he also understood that the same twelve jurors would have to be unanimous in rendering a death penalty. When asked what "beyond a reasonable doubt" meant, he replied, "that you're 100% guilty."

Mr. Wilson appeared to have a basic understanding of the plea bargain process. He understood that if he pled not guilty, he was "innocent." When asked what happened when someone pleads not guilty, he replied, "They go to trial." Asked the consequences of pleading not guilty, he replied, "confinement in prison or release." When asked what things a lawyer might do when someone wanted to plead not guilty, he replied, "get a motion for discovery to get evidence, and get the witnesses, and talk to me." Mr. Wilson understood that if he pled guilty there would be "no trial." When asked what a lawyer might do when someone wanted to plead guilty, he replied, "Work it out, a plea agreement." Mr. Wilson appeared to understand that, if he pled guilty, he waived his "right to a jury trial." He also understood that there was no immediate appeal in a plea agreement.

Mr. Wilson understood that no one could compel him to testify at his trial, but that his lawyer could ask him to testify. He understood that he would also be subject to cross-examination by the District Attorney if he testified. He understood that, if he pled guilty, the Judge would "go through the Court hearing and sentence you accordingly." He also appeared to understand what type of questions he and his lawyer should discuss before he decided to plead guilty or not. For example, he stated that he would want to know whether or not he "will get trustee status, or thirty for thirty." He also said that he would want to know whether or not there was the possibility for "early release time, they're taking the cap off so you can get off sooner."

Section Two - Understanding the Possible Consequences of the Proceedings: Appreciates Personal Involvement In and Importance of the Proceedings

Mr. Wilson understood that he is charged with "capital murder." He repeatedly stated that he had not intentionally harmed the child and said that "I may be guilty of neglect, but I didn't murder the child." He understood that, if found guilty as charged, he was

Mr. Wilson appeared to understand the appropriate way to challenge a witness during the trial. He understood that he would "address my lawyer" if he had a question regarding a witness' testimony. When asked who might likely tell lies about his case, he replied, "Augustina Connor, my girlfriend, she said I kidnapped her." He insisted that he had not kidnapped anyone.

Mr. Wilson indicated that he would not have any difficulty testifying relevantly at his trial. He reported that he did not have any problems communicating with anyone, including his attorney or this examiner, and he did not believe that he would have any difficulty communicating in the courtroom. Mr. Wilson also appeared to understand the importance of managing his behavior in the courtroom and he denied having misbehaved at any time during his case thus far. He understood that he would only be allowed to speak in the courtroom if he were asked to testify or asked to do so by the Judge. He understood that if he interrupted the court proceedings, he could "get kicked out, get contempt."

MENTAL STATE AT THE TIME OF THE ALLEGED OFFENSE:

Mr. Wilson gave a detailed account of his behavior at the time of the alleged offense. He reported that he had been living with his girlfriend and her daughter at the time of the offense and he had been working. He denied experiencing any unusual or bizarre perceptions on the day of the alleged offense. He also denied using any drugs or alcohol on the day of the offense. He said that he had smoked approximately an ounce of marijuana the week prior to the offense.

He gave a lengthy and coherent account of the events occurring on the day of the alleged offense. He reported that he got home from work at approximately 3:30 pm. He said that the child's mother, Augustina Connor, then went to work after he got home. He said that he was going to feed the child and a friend came over. He said that he had bathed the child and then set her on the couch to watch television. He said that he went to check on her around 9:00 pm. He said that he was watching television and then went to check on her and she had thrown up on the bed. He said that he had picked her up and, as he was moving between the oversized refrigerator, he had turned and the child fell. He said that he thought, "She might have been dazed." He reported that he washed her off, but she would not sit up. He said that as he was washing her in the bathtub she fell and hit her head. He said that when her mother returned home, the mother asked if they should take the child to the hospital and he said that they should wait to see if she would be better in the morning. Mr. Wilson said that they laid the child on a pallet on the floor in the living room and they stayed in the living room with

her. He said that they stayed up with her until approximately 3:30 or 4:00 and then when they got up at 5:30 a.m. they were concerned and called 911.

COLLATERAL SOURCES:

Robert Camp: Mr. Camp is 34 years old. He said he was Mr. Wilson's supervisor at Cole Equipment. Mr. Camp said Mr. Wilson had worked there from 2001 until the time of his arrest. Mr. Camp said that Mr. Wilson was a good employee and a hard worker. He said that Mr. Wilson interacted well with other employees, and he said he had never seen Mr. Wilson act in a violent or aggressive manner. Mr. Camp said he knew Mr. Wilson drank, but he never saw him drink excessively. He said he had seen Mr. Wilson with the victim on one occasion and Mr. Camp said the child "clung to him like he was her daddy." He said that Mr. Wilson "got very upset the time the little girl (victim) burned her feet, and he (Mr. Wilson) asked to go home so he could be with her."

Coach Michael Bradley: Mr. Bradley is 37 years old. Coach Bradley was Mr. Wilson's junior high school coach. Coach Bradley said Mr. Wilson worked as a manager with the high school football team. Coach Bradley described Mr. Wilson as a quiet child. Coach Bradley said he was always very polite and respectful, and Coach Bradley said he did not know that Mr. Wilson had gotten into any trouble in school, and he said he did not know that Mr. Wilson had used drugs or alcohol in school.

PROVISIONAL DIAGNOSES:

Axis I	Cannabis Abuse Polysubstance Abuse by history
Axis II	No Diagnosis
Axis III	No Diagnosis
Axis IV	Incarceration, Pending Trial for Capital Murder
Axis V	GAF at Present: 80

FORENSIC OPINIONS:

It is my opinion, to a reasonable degree of psychological certainty, that Mr. Wilson has

the sufficient present ability to confer with his attorney with a reasonable degree of rational understanding and he has a very good factual and rational understanding of the nature and object of the legal proceedings against him. Mr. Wilson had no difficulty understanding the nature and reason of his arrest. He understood the role of the key participants in the courtroom and the basic legal process. He understood the nature of a plea agreement. He understood the nature and severity of the charges and the possible penalties, including the death penalty. He appeared to have the capacity to communicate with his attorney and to engage and plan an appropriate legal strategy. He also appeared to understand the appropriate way to challenge a witness in the courtroom and he appears to have the capacity to testify relevantly and to manage his behavior in the courtroom. Mr. Wilson's intellectual level falls in the average range and his reading level also falls in the average range and there was no indication of any expressive or receptive language deficits.

It is my opinion, to a reasonable degree of psychological certainty, that Mr. Wilson was not suffering from a severe mental illness at the time of the alleged offense that would have prevented him for being able to understand the nature and quality of his alleged actions or would have prevented him from being able to distinguish the difference between right and wrong in relation to his actions at that time. Mr. Wilson reported he had no history of mental illness prior to his arrest, and his mother corroborated this fact. He said he had received medication for anxiety since his incarceration, but he said this medication had been discontinued because of adverse effects. Results of the interview and testing did not reveal any signs of severe psychopathology. Mr. Wilson reported a long-standing history of cannabis abuse, but he denied any use of this substance on the day of the alleged offense.

There appear to be several non-statutory mitigating factors. His mother reported that he has no history of violent behavior and he reportedly does not have any history of felony arrests for violent behavior. Mr. Wilson described his relationship with the victim and the child's mother very positively, and his mother reported that he had been a caring father figure. Mr. Wilson's supervisor described Mr. Wilson as a responsible and respectful employee. Mr. Wilson's coach described him as a polite and respectful child/adolescent. Both the coach and his supervisor said they had never seen Mr. Wilson act in a violent or inappropriate manner. Mr. Wilson has also not exhibited any inappropriate or aggressive behavior since his incarceration.

DISPOSITION:

Mr. Wilson was returned to the custody of the Lee County Sheriffs Department. He did

not appear to be in need of any further evaluation and he did not appear to be in need of any type of psychological or psychiatric treatment at this time.

It should be noted that I have been unable to obtain additional information obtained by the Office of Capital Defense. If I obtain additional information I will provide a supplemental report to the Court. If I can be of any further assistance in this case, please do not hesitate to contact me.

Respectfully,

W. Criss Lott, Ph.D.
Clinical Psychologist

WCL/gci