IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES RICHARD CONNERS, JR. — APPELLANT

VS. — NO. 2011-KA-0406-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

In this direct appeal from his convictions of double murder and two (2) counts of firearm possession by a four (4) time prior convicted felon, James Conners, a non-testifying defendant who shared a mobile home with the two (2) victims, his brother and sister-in-law, informed sheriff's deputies and investigators in a video statement that he had been in a drug-induced sleep since two (2) days earlier when drug users from New Orleans came to his home and, after killing his brother and sister-in-law, assaulted Conners with the butt of a shotgun and forced pre-crushed pills down his throat, thereby causing him to pass out until police officers arrived and aroused him two (2) days later. (R. 343-44, 347, 358, 394, 464)

"That is the only possible reasonable explanation." (Defendant's closing argument @ 570)

According to Conners, he awoke during the early evening hours of Friday, January 22nd, to police officers standing over his bed. Both victims had been lying inside the mobile home in the initial stages of decomposition since January 20th.

Police officers testified Conners was in his bed watching Seinfield on television when they arrived. (R. 343-44, 376, 456-57)

The jury didn't believe this version of the dual homicides and convicted Conners of murdering both Kenneth and Sandra Conners.

The admission into evidence of two forensic reports prepared by forensic scientists but introduced into evidence through a sheriff's deputy and the ineffectiveness of trial counsel for failing to object to, *inter alia*, the two reports, form the centerpiece of the present appeal.

Conners's convictions of murder were based largely, but not entirely, upon circumstantial evidence. Although two ear witnesses testified to hearing gunshots on January 20th, there were no eye witnesses to the shooting itself.

JAMES RICHARD CONNERS, a fifty-eight (58) year old Caucasian male, prior convicted felon, and non-testifying defendant, prosecutes a criminal appeal from his dual convictions of murder less than capital (Counts One and Two) and two (2) individual counts of possession of a firearm by a convicted felon (Counts Three and Four), following a three (3) day trial by jury conducted on January 25-27, 2011, in the Circuit Court of Pike County, Michael M. Taylor, Circuit Judge, presiding.

The trial judge granted Connors's motion for a directed verdict with respect to a charge of possession of stolen property contained in Count Five. (C.P. at 67)

A separate sentencing hearing was conducted on February 7, 2011 (R. 585-89), at the conclusion of which the court sentenced Conners to two life sentences for the murders charged in

Counts One and Two and to two ten (10) year sentences for the firearm possession charges found in Counts Three and Four. These sentences were imposed to run consecutively. (R. 587-89; C.P. at 76)

Conners's indictment, omitting its formal parts, charged in Count One

> " . . . [t]hat **JAMES RICHARD CONNORS, JR.,** . . . on or about January 22, 2010, . . . did wilfully, unlawfully, feloniously, and of his malice aforethought, kill and murder one Kenneth Conners, a human being, by shooting him with a gun, contrary to and in violation of Section 97-3-19 of the Mississippi Code of 1972, this being count one of the indictment;
>
> * * * * * *
>
> COUNT TWO
>
> "and that on or about January 22, 2010, . . . the said **JAMES RICHARD CONNORS, JR.,** did wilfully, unlawfully, feloniously and of his malice aforethought, kill and murder one Sandra Connors, a human being, by shooting her with a gun, contrary to and in violation of Section 97-3-19 of the Mississippi Code of 1972, this being count two of the indictment . . .

Counts Three and Four of Conners's indictment charged him with possession of a firearm by a four time prior convicted felon. (C.P. at 5)

Count Five charged Conners with possession of stolen property. The trial court granted a directed verdict on this charge. (C.P. at 67)

Two (2) primary issues with several sub-issues are raised by Conners on appeal to this Court, including (1) the alleged denial of Connors's constitutional right to confront the witnesses against him when the State admitted into evidence two forensic reports prepared by forensic scientists but introduced into evidence through Chief Detective Davis Haygood and (2) ineffective assistance from Connors's two trial attorneys, a claim excruciatingly overused and worn threadbare by society's criminal element.

Connors concedes in his brief there was no objection, contemporaneous or otherwise, to any

of the evidence or testimony complained about and invites this court to invoke the often relied upon doctrine of plain error. (Brief of the Appellant at 9-10, 19)

STATEMENT OF FACTS

Counsel for Connors has penned a fair and accurate version of the prominent facts involved in this prosecution for double murder and two counts of firearm possession by a conviction felon.

It is enough to say here that the facts and circumstances of this double murder, including Connors's video interview, point unerringly to Connors, a criminal entrepreneur with a history of violence and drug abuse, as the trigger man.

Twelve (12) witnesses testified for the State of Mississippi during its case-in-chief including Chief Deputy Davis Haygood who testified as to the content of Connors's video statement which was shown to the jury. (R. 346-47)

Counsel opposite has fairly summarized the testimony of a majority of the State's witnesses, and we respectfully decline to plow that ground again here.

We add only the following chronology of events which will be helpful.

Wednesday, January 20th, 2010. Kathleen Theriot, the victim's granddaughter, speaks with Sandra Conners on the telephone around 9:00 a.m. Sandra says she will call back later but never does. (R. 273-74)

Jackie Young and Elizabeth Bowen hear four (4) gunshots in succession around 4:30 or 5:00 p.m. (R. 236, 249)

Thursday, January 21st and Friday, January 22nd, 2010. Bowen tries to reach Sandra Conners by telephone, but there is no answer. (R. 250-51)

Friday, January 22nd, 2010. Theriot arrives at the mobile home between 2:00 and 5:00 p.m. and calls the police. (R. 276) She hears a dog barking, a loud television, and footsteps. (R. 276-77)

Lieutenant Milholen arrives at the mobile home in the wake of a "welfare concern" call and observes through a window the body of Kenneth Connors lying on the floor in the living room. (R. 228)

Chief Detective Haygood arrives at the scene and speaks with other investigators who had not yet entered the mobile home. (R. 297) Connors is later found, freshly shaven and neatly attired, lying in his bed watching television. (R. 344, 457) Based upon Connors's statement that drug users had forced pre-crushed pills, possibly opiates, down his throat, Conners is taken to the hospital for evaluation. (R. 394)

Tuesday, January 26th, 2010. Conners is released from the hospital and taken to the station house where he is questioned for three (3) hours. (R. 395-98) The interview is videotaped and played as exhibit S-84 in the presence of the jury. (R. 346-47)

In the midst of trial a stipulation was entered into between the two parties. (R. 266-270)

At the close of the State's case-in-chief the court read into the record the following stipulation made by the litigants:

> BY THE COURT: * * * And the Court has received a written stipulation from the parties. It's styled basically as an instruction and with the title Stipulation. And I'm going to change the wording of what I tell the jury is - - I will say, "The Court advises you that the parties have stipulated that the Defendant is a convicted felon as the term applies in this case." And then, of course, the instruction later will take that up. And at which point I anticipate the State's going to rest. (R. 498)

The defendant thereafter made a motion for a directed verdict which was denied as to Counts One, Two, Three, and Four, and granted as to the charge of stolen property contained in Count Five. (R. 499-505, 527; C.P. at 67)

Upon the jury's return to the Courtroom, the circuit judge read to the jury the following

statement: "The Court advises you that the parties have stipulated the Defendant is a convicted felon as such term applies in this case." (R. 505)

After being advised of his right to testify or not, Conners personally elected to remain silent. (R. 496-97)

The defendant produced one witness, Dr. Olukunle Ajagbe, in defense of the charges. (R. 505) Dr. Ajagbe was one of Connors's attending physicians during Conners's hospitalization from January 22- 26, 2010.

Conners's defense was that he was present inside the mobile home when a drug deal went bad. (R. 226)

The State had no rebuttal. (R. 525-26)

Conners's renewed motion for a directed verdict was overruled save for the charge contained in Count Five which was granted. (R. 527) Conners's request for peremptory instruction was also denied save for the charge in Count Five. (C.P. at 67)

Following closing arguments, the jury retired to deliberate at 7:10 p.m. (R. 579) Less than an hour later at 7:45 p.m., it returned with verdicts of guilty of murder in Count 1, guilty of murder in Count 2, guilty of possession of a firearm by a convicted felon in Count 3 and guilty of possession of a firearm by a convicted felon in Count 4. (R. 581)

A poll of the jury, signified by raised hands, reflected the verdicts returned were unanimous. (R. 581-82)

Sentencing was set for February 7, 2010, at which time the trial judge, upon concluding that Connors was ". . . incapable of participating or engaging our society in any constructive manner", sentenced Connors " . . . on each count of murder to life in prison, and on each count of possession of a firearm by a convicted felon to ten years, with all four of those sentences to run consecutively

to each other." (R. 587; C.P. at 76)

On February 11, 2011, Connors filed his motion for J.N.O.V. and/or for a new trial. (C.P. at 77-78)

The motion was denied by Judge Taylor on March 15, 2011. (C.P. at 89)

Notice of Appeal was filed on March 17, 2011. (C.P. at 83)

Thomas P. Welch, Jr. and Paul Luckett, practicing attorneys and public defenders in Pike County, represented Williams effectively during the trial of this cause.

Mollie McMillin, an attorney with the Office of the State Public Defender, Indigent Appeals Division, has been substituted on appeal. Ms McMillin's representation has been equally effective.

SUMMARY OF THE ARGUMENT

Testimony and Evidence Not Objected To.

It is well-settled law that the failure to make a contemporaneous objection waives the right of raising the issue on appeal. **Barfield v. State,** 22 So.3d 1175 (Miss. 2009); **Christmas v. State,** 10 So.3d 413 (Miss. 2009), reh denied. The Supreme Court departs from this premise only in unusual circumstances, as a means of preventing a manifest miscarriage of justice. **Goff v. State,** 14 So.3d 625 (Miss. 2009), reh denied, cert denied 130 S.Ct. 1513, 176 L.Ed.2d 122.

"A trial judge will not be found in error on a matter not presented to him for decision." **Drummond v. State,** 33 So.3d 507, 512 (¶16) (Ct.App.Miss. 2009).

Miss.R.Evid. 103(a) (1) reads, in part, as follows: "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and (1) , , , [i]n case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context . . ."

There was no objection, contemporaneous or otherwise, either before or during trial, to the specific matters complained about on appeal for the first time. Accordingly, these issues are procedurally barred. **Williams v. State,** 971 So.2d 581, 590 (Miss. 2007).

In any event, admission into evidence of the forensic reports complained about could not have contributed one whit to Connors's convictions and was harmless beyond a reasonable doubt. *See* **Chapman v. California,** 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), reh den 17 L.Ed.2d 705.

Effectiveness of Trial Counsel.

In order for an appellate court to reverse a conviction on appeal, there must be a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." **Chamberlin v. State,** 55 So.3d 1046, 1050 (¶5) (Miss. 2010), quoting **Mohr v. State,** 584 So.2d 426, 430 (Miss. 1991).

The evidence of Connors's guilt was overwhelming despite its mixture as both direct and circumstantial. It simply cannot be said that " . . . the outcome in this case would have been different" if Conners's two lawyers had objected at trial.

In any event, appellate review of counsels's performance must await review in a post-conviction environment. NO - See MRAP 22(b) cmt.

Plain Error. The plain error rule which, in our opinion, essentially eviscerates any need or requirement for a contemporaneous objection to evidence, is inapplicable here because there was no actual error.

Even if otherwise, the error was neither "plain," "clear," nor "obvious."

Although no objection was made at trial, no error actually affecting the defendant's substantive/fundament right to confrontation of the witnesses against him was committed by counsel.

The matters presented, being unobjected to, are procedurally barred and do not rise to the level of plain error.

Harmless Error. Assuming, arguendo, there is "plain error," it was clearly harmless beyond a reasonable doubt because the evidence preponderates very heavily in favor of the guilty verdict.

Admission into evidence of the forensic reports complained about, whether testimonial or not, was clearly harmless beyond a reasonable doubt because the conclusions reached were just as consistent with innocence as guilt. Any error could not have contributed one whit to the defendant's conviction. *See* **Chapman v. California,** *supra*, 386 U.S. 18, 87 S.Ct.824, 17 L.Ed.2d 705 (1967), reh den 17 L.Ed.2d 705.

ARGUMENT

ISSUE ONE.

THERE WAS NO OBJECTION DURING TRIAL, CONTEMPORANEOUS OR OTHERWISE, TO THE TWO FORENSIC REPORTS AND TESTIMONY COMPLAINED ABOUT FOR THE FIRST TIME ON APPEAL.

ACCORDINGLY, CONNERS IS PROCEDURALLY BARRED FROM RAISING THESE MATTERS AT THIS BELATED HOUR. STATED DIFFERENTLY, HE HAS WAIVED AND/OR FORFEITED HIS RIGHT TO HAVE THESE ISSUES CONSIDERED ON APPEAL.

THE PLAIN ERROR RULE IS INAPPLICABLE HERE BECAUSE ANY ERROR WAS NOT "PLAIN." ASSUMING OTHERWISE, IT WAS HARMLESS BEYOND A REASONABLE DOUBT.

Conners argues for the first time that his fundamental constitutional right to confront the witnesses against him was violated by the reading into evidence of the results of certain firearm analyst's reports and a toxicology report prepared by non-testifying forensic experts but introduced into evidence through the testimony of a sheriff's deputy.

The specific targets of Conners's complaint are (1) reports of a firearm's analyst concluding that the shotgun shells found at the scene and the shotgun pellets recovered from the bodies of the two victims bore similar class characteristics consistent with those produced by the 12- gauge shotgun found on a table inside the front room of the mobile home, and (2) a toxicology report concluding that Connors had oxycodone and opiate metabolite in his system the day he was taken from the mobile home and hospitalized.

Conners argues these reports were testimonial in nature, and by virtue of **Melendez-Diaz v. Massachusetts,** __ U.S. ___ , 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), could only have been introduced through the analysts who actually conducted the tests. He seeks reversal of his convictions and sentences and a remand for a new trial. (Brief of Appellant at 12, 19)

We decline to address the merits of these complaints because there was no objection, contemporaneous or otherwise, to any of the reports and testimony complained about for the first time here and now. These grounds of objection could, and should, have been raised then and there. Conners is barred from raising them for the first time on appeal. Besides, Conners was hopelessly guilty.

Procedural Bar. The Contemporaneous Objection Rule.

The problem with all of these arguments, as Conners is well aware, is that none of this evidence and testimony generated an objection, contemporaneous or otherwise - not even a whimper. Rather, these matters and occurrences are complained about for the first time on appeal.

It has been said time and again that the failure to make a timely objection to an issue at trial waives consideration of the issue on appeal. **Keys v. State,** 33 So.3d 1143, 1149-50 (¶22) (Ct.App.Miss. 2009), citing **Bogan v. State,** 754 So.2d 1289, 1294 (¶19) (Ct.App.Miss. 2000).

We respectfully point out the testimony and evidence assailed "here and now" was not so

obviously egregious and prejudicial "then and there." There was no contemporaneous objection at trial to any of the testimony and evidence complained about on appeal.

These observations, standing alone, are fatal to Conners's complaints raised here for the first time on appeal. In short, any error was waived when Conners failed to object during trial or move to suppress prior to trial. Accordingly, Conners has "forfeited" his right to raise these claims on appeal. *See* **United States v. Dodson,** 288 F.3d 153 (5th Cir. 2002), reh denied, cert denied 123 S.Ct. 32 [Forfeiture is the failure to make the timely assertion of a right, generally by failure to object to an error in the proceedings.]

It is elementary that a contemporaneous objection is required in order to preserve an error for appellate review. **Caston v. State,** 823 So.2d 473 (Miss. 2002), reh denied; **Logan v. State,** 773 So.2d 338 (Miss. 2000); **Florence v. State,** 755 So.2d 1065 (Miss. 2000); **Jackson v. State,** 766 So.2d 795 (Ct.App.Miss. 2000); **Goree v. State,** 750 So.2d 1260 (Ct.App.Miss. 1999).

Otherwise the error, if any at all, is waived for appeal purposes. **Caston v. State,** *supra*, 823 So.2d 473 (Miss. 2002), reh denied.

Stated differently, "[t]he failure to object at trial acts as a procedural bar in an appeal." **White v. State,** 964 So.2d 1181, 1185 (Ct.App.Miss. 2007), citing **Jackson v. State,** 832 So.2d at 579, 581(¶3) (Ct.App. Miss. 2002), citing **Carr v. State,** 655 So.2d 824, 853 (Miss. 1995).

A defendant is **not** entitled to raise new issues on appeal that he has not first presented to the trial court for consideration. **Hodgin v. State,** 964 So.2d 492 (Miss. 2007). This rule is not diminished in a capital case. **Flowers v. State,** 947 So.2d 910 (Miss. 2007). Moreover, it also applies to constitutional questions. **Williams v. State,** 971 So.2d 581 (Miss. 2007) ["As a general rule, constitutional questions not asserted at the trial level are deemed waived."] *See also* **Ross v.**

State, 954 So.2d 968, 987-88, 1015 (Miss. 2007); **Rogers v. State,** 928 So.2d 831, 834 (Miss. 2006).

In **Gonzales v. State,** 963 So.2d 1138, 1144 (Miss. 2007), the Supreme Court reaffirmed the rule with the following rhetoric:

> Where an argument has never been raised before the trial court, we repeatedly have held that 'a trial judge will not be found in error on a matter not presented to the trial court for a decision.' *Purvis v. Barnes,* 791 So.2d 199, 203 (Miss. 2001).

The contemporaneous objection rule has been applied to speedy trial violations, discovery violations, ***Batson*** violations, in-court identifications, admission of wrongfully obtained evidence, trial *in absentia,* and the like. *See* **Miller v. State,** 956 So.2d 221 (Miss. 2007) [speedy trial]; **Jackson v. State,** 962 So.2d 649 (Ct.App.Miss. 2007), reh den, cert den [discovery]; **Flowers v. State,** 947 So.2d 910 (Miss. 2007) and **Roles v. State,** 952 So.2d 1043 (Ct.App.Miss. 2007) [***Batson***]; **Black v. State,** 949 So.2d 105 (Ct.App.Miss. 2007) [in-court identifications]; **Gonzales v. State,** *supra,* 963 So.2d 1138 (Miss. 2007)[wrongfully obtained evidence]; **Mallard v. State,** 798 So.2d 539 (Miss. 2001) [trial *in absentia*].

The contemporaneous objection rule is in place in order to enable the trial judge to correct error with proper instructions to the jury whenever possible. **Slaughter v. State,** 815 So.2d 1122 (Miss. 2002), reh denied.

A trial court cannot be put in error unless it had an opportunity to first pass on the question. **Palm v. State,** 748 So.2d 135 (Miss. 1999); **Fulgham v. State,** 770 So.2d 1021 (Ct.App.Miss. 2000). *See also* **Mallard v. State,** *supra,* 798 So.2d 539, 542 (Miss. 2001), where this Court held that Mallard's complaint that she was tried in her absence was waived, for the purposes of appeal, since she failed to object to her trial *in absentia.*

Miss.Code Ann. § 99-35-143 is precisely in point. It reads, in its pertinent parts, that

> [a] judgment in a criminal case **shall not be reversed** because the transcript of the record does not show a proper organization of the court below or of the grand jury, or where the court was held, or that the prisoner was present in court during the trial or any part of it, or that the court asked him if he had anything to say why judgment should not be pronounced against him upon the verdict, **or because of any error or omission in the case in the court below, except where the errors or omission are jurisdictional in their character, unless the record show that the errors complained of were made ground of special exception in that court.** [emphasis added]

The underlying bases for the existence of a contemporaneous objection rule are contained in **Oates v. State**, 421 So.2d 1025, 1030 (Miss. 1982), where we find the following:

> There are three basic considerations which underlie the rule requiring specific objections. It avoids costly new trials. Boring v. State, 253 So.2d 251 (Miss. 1971). It allows the offering party an opportunity to obviate the objection. Heard v. State, 59 Miss. 545 (Miss. 1882). Lastly, a trial court is not put in error unless it had an opportunity to pass on the question. Boutwell v. State, 165 Miss. 16, 143 So. 479 (1932). These rules apply with equal force in the instant case; accordingly, we hold that appellant did not properly preserve the question for appellate review.

In **Leverett v. State**, 197 So.2d 889, 890 (Miss. 1967), this Court, quoting from **Collins v. State**, 173 Miss. 179, 180, 159 So. 865 (1935), penned the following language:

> The Supreme Court is a court of appeals, it has no original jurisdiction; it can only try questions that have been tried and passed upon by the court from which the appeal is taken. Whatever remedy appellant has is in the trial court, not in this court. This court can only pass on the question after the trial court has done so.

In **Sumner v. State,** 316 So.2d 926, 927 (Miss. 1975), we find the following language concerning the time for making an objection:

> The rule governing the time of objection to evidence is that it must be made as soon as it appears that the evidence is

> objectionable, or as soon as it could reasonably have been known to the objecting party, unless some special reason makes a postponement desirable for him which is not unfair to the proponent of the evidence. *Williams v. State*, 171 Miss. 324, 157 So. 717 (1934) and cases cited therein. See also cases in Mississippi Digest under Criminal Law at 693.

We reiterate. "A trial judge will not be found in error on a matter not presented to him for decision." **Ballenger v. State**, 667 So.2d 1242, 1256 (Miss. 1995) citing numerous cases. *See also* **McLendon v. State,** 945 So.2d 372 (Miss. 2006), reh den, cert den; **Howard v. State,** 945 So.2d 326 (Miss. 2006), reh den, cert den. "[The Supreme Court] cannot find that a trial judge committed reversible error on a matter not brought before him to consider." **Montgomery v. State,** 891 So.2d 179, 187 (Miss. 2004) reh den.

No egregious violation of a fundamental or substantial right is involved here, and the procedural bar/waiver/forfeiture rule is applicable to James Richard Conners, Jr.

Plain Error .

Connors argues that because these matters were not objected to he must proceed under the doctrine of plain error.

Miss.R.Evid. 103 (d) reads as follows: "Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court."

We continue to adhere to our view that "plain error" is something for a reviewing court to notice and not a crutch or talisman for an appellant, in the pinch, to argue. In our opinion, excessive application of the plain error doctrine eviscerates the heart of the contemporaneous objection rule.

In any event, the plain error doctrine is inapplicable here because in order to find

"plain" error there must be actual "error."

"The plain error doctrine requires that there be an actual error and the error must have resulted in a manifest miscarriage of justice." **Williams v. State,** 794 So.2d 181, 187 (Miss. 2001).

In **McGee v. State,** 953 So.2d 211, 215 (Miss. 2007), we find the following language dispositive of any "plain error" argument:

> * * * However, if there is a finding of plain error, a reviewing court may consider the issue regardless of the procedural bar. A review under the plain error doctrine is necessary when a party's fundamental rights are affected, and the error results in a manifest miscarriage of justice. *Williams v. State,* 794 So.2d 181, 187-88 (Miss. 2001). **To determine if plain error has occurred, we must determine "if the trial court has deviated from a legal rule, whether that error is plain, clear or obvious, and whether the error has prejudiced the outcome of the trial."** *Cox v. State,* 793 So.2d 591, 597 (Miss. 2001) (relying on *Grubb v. State,* 584 So.2d 786, 789 (Miss. 1991);,*Porter v. State,* 749 So.2d 250, 260- 61 (Miss.Ct.App. 1999).

See also **United States v. Seale,** 600 F.3d 473 (5thCir. 2010) certiorari denied 131 S.Ct. 163, 178 L.Ed.2d 97.

The Supreme Court applies the "plain error" rule " . . . only when it affects a defendant's substantial/fundamental rights." **Williams v. State,** *supra*, 794 So.2d at 187.

None of this criteria is found to exist in the case at bar.

First, Judge Taylor did not deviate from a legal rule. In the absence of a motion to suppress or contemporaneous objection, the trial judge never had the opportunity to rule on the matters identified here. Thus, there is no error, plain or otherwise, to review.

Second, even if there is the spectre of error affecting a substantial right, it is neither "plain" nor "clear" nor "obvious." Accordingly, admission of the testimony and evidence

targeted here did not prejudice the outcome of the trial where, as here, evidence of Conners's guilt was overwhelming. In other words, any error did not result in a "manifest miscarriage of justice."

Harmless Error.

Assuming, arguendo, there is "plain error," it was clearly harmless beyond a reasonable doubt because the evidence preponderates very heavily in favor of the guilty verdict, and any error could not have contributed one whit to the defendant's conviction. *See* **Chapman v. California,** *supra*, 386 U.S. 18, 87 S.Ct.824, 17 L.Ed.2d 705 (1967), reh den 17 L.Ed.2d 705.

Specifically, admission into evidence of the ballistics and toxicology reports was, at best, harmless beyond a reasonable doubt because the conclusions reached in these reports introduced through Detective Haygood were just as consistent with Conners's innocence as they were for his guilt. More likely than not, they were not objected to on this basis alone.

The spent 12-gauge shell casings and the shotgun pellets recovered from the bodies of the victims were consistent with having been fired from a sawed off 12-gauge shotgun but could not be conclusively tied to the 12-gauge shotgun found at the scene. (R. 342-43) The shells could not be positively included or excluded as having been fired from the 12-gauge found at the scene to the exclusion of all other firearms bearing the same class characteristics. (R. 342)

The pellets and wadding were consistent in size with shells marketed by Remington. (R. 340-41)

Either the same report or another report concluded that the 12-gauge shotgun found at the trailer was a functioning weapon, a rather innocuous revelation.

The toxicology report concluded that Connor's blood drawn the first day of his hospitalization on January 22nd tested positive for caffeine, oxycodone, and opiate metabolites when he was found in the trailer. (R. 367) According to Connors's prescription profile, he had prescriptions for oxycodone and morphine. This was brought out by the defense during its cross-examination of Detective Haygood. (R. 382-83) All of this testimony was consistent with Connors's video interview where he told investigators the drug users had stuffed pre-crushed drugs down his throat causing a drug induced two (2) day sleep.

These observations also support our position that the failure of defense counsel to object to these reports for want of the testimony of the analysts who prepared them, was a deliberate tactical choice and a matter of trial strategy.

ISSUE TWO.

TRY AS HE MIGHT, CONNERS HAS FAILED ON DIRECT APPEAL TO MAKE OUT A CLAIM *PRIMA FACIE* OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

THE RECORD OF TRIAL, IN ITS PRESENT POSTURE, FAILS TO REFLECT INEFFECTIVENESS OF CONSTITUTIONAL DIMENSION.

IN ANY EVENT, COMPLAINTS CONCERNING COUNSEL'S FAILURE TO FILE CERTAIN MOTIONS AND MAKE CERTAIN OBJECTIONS FALL WITHIN THE AMBIT OF TRIAL STRATEGY AND CANNOT SERVE AS A BASIS FOR INEFFECTIVENESS IN THE CONSTITUTIONAL SENSE.

Appellate counsel, with the refractive aid of hindsight and back-focal lenses, assails the effectiveness of tandem trial attorneys, Thomas P. Welch, Jr. and Paul Luckett, each of whom is alleged to have committed several sins of both commission and omission sufficient to render their dual representation at trial ineffective in the constitutional sense.

This is yet another case where, according to a convicted defendant, his trial lawyers should have done this or should have done that and the failure of counsel to do this or that amounted to ineffectiveness in the constitutional sense.

The bark of Conners's appellate lawyer is far worse than the bite she attributes to Conners's trial lawyers who performed in an exceptional manner. They filed a motion for change of venue supported by the required documentation and moved in *limine* to preclude introduction of a toxicology report (C.P. at 35-36, 39-40) as well as crime scene photographs depicting what appears to be a recipe for methamphetamine in Conners's bedroom. (C.P. at 37-38) Trial counsel also stipulated as to Connors's prior felony convictions and cross-examined the witnesses for the State with a great degree of skill and expertise.

Our review of the record leads to the inescapable conclusion that counsels's representation, even if not perfect or errorless, was not so defective as to give rise to a bona fide claim of ineffectiveness in the constitutional sense. This is especially true given the strength of the prosecution's case.

Conners claims that counsel was ineffective for (1) failing to object to the admission of forensic reports, including ballistic and toxicology reports; (2) failing to object to allegedly inflammatory and prejudicial crime scene photographs and (3) evidence revealing Connors's gang affiliation and prior criminal record.

This claim is devoid of merit for at least three (3) reasons.

First of all, the record, in our opinion, is factually inadequate for a determination by a reviewing court that trial counsel was ineffective for the reasons he now claims. Without addressing each individual lapse of counsel alleged by Conners, we respectfully defer to the cases which have declined to address the issue without prejudice to the appellant's right to

raise the matter *de novo* in a post-conviction environment. *See* **Wilson v. State,** 21 So.3d 572 (Miss. 2009), reh denied; **Neal v. State,** 15 So.3d 388 (Miss. 2009), reh denied; **Brown v. State,** 965 So.2d 1023 (Miss. 2007).

Second, contrary to Connors's suggestion otherwise, defense counsel did object to the toxicology report but on different grounds. *See* motion in *limine* and amended motion in *limine* at C.P. 35-36, 39-40)

Any failure to further object in each one of the instances complained about can be reasonably perceived as a matter of trial strategy which virtually inoculates counsel from Conners's claims of ineffectiveness in the constitutional sense.

Third, any failure to object, even if error, was harmless error beyond a reasonable doubt. The evidence in this case was overwhelming, and it simply cannot be said that "the outcome in this case would have been different" if Conners's attorneys had objected at trial.

Further discussion of these three points follows.

1. Record Factually Inadequate.

We respectfully submit that even if one or more of these alleged lapses of trial counsel can be deemed a deficiency, the deficiencies, if any, failed to result in prejudice to Conners. **Strickland v. Washington,** 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

We also submit that, at best, any scrutiny of trial counsels's omissions must await a new horizon in a post-conviction environment where both lawyers will have an opportunity to explain the reasons for their actions and inactions. It is a rare case indeed where an appellate court will find constitutional ineffectiveness in trial counsel without granting to counsel a meaningful opportunity to be heard.

Conners claims that counsel was ineffective in the constitutional sense for failing to

object to forensic reports allegedly "testimonial" in nature, certain crime scene photographs, and testimony revealing Connors's gang affiliation and prior criminal record.. (Brief of the Appellant at ii, iii, 13-19) These issues are not based upon facts fully apparent from the record since the failure to object could have been a product of defense counsels's trial strategy.

We decline to stipulate the record is adequate for the Court to determine the effectiveness of trial counsel. The record, in our opinion, is factually inadequate for a determination by a reviewing court that trial counsel was ineffective for the reasons he now claims. We respectfully defer to the cases which have declined to address the issue without prejudice to the appellant's right to raise the matter *de novo* in a post-conviction environment.

The ground rules for resolving this complaint were first set forth in **Read v. State,** 430 So.2d 832, 841 (MIss. 1983), where this Court stated:

> (1) **Any defendant convicted of a crime may raise the issue of ineffective assistance of counsel on direct appeal, even though the matter has not first been presented to the trial court. The Court should review the entire record on appeal.** If, for example, from a review of the record, as in *Brooks v. State*, 209 Miss. 150, 46 So.2d 94 (1950) or *Stewart v. State*, 229 So.2d 53 (Miss. 1969), this Court can say that the defendant has been denied the effective assistance of counsel, the court should also adjudge and reverse and remand for a new trial. *See also, State v. Douglas*, 97 Idaho 878, 555 P.2d 1145, 1148 (1976).
>
> (2) Assuming that the Court is unable to conclude from the record on appeal that defendant's trial counsel was constitutionally ineffective, the Court should then proceed to decide the other issues in the case. Should the case be reversed on other grounds, the ineffectiveness issue, of course, would become moot. **On the other hand, if the Court should otherwise affirm, it should do so without prejudice to the defendant's right to raise the ineffective assistance of counsel issue via appropriate post-conviction proceedings.**

> If the Court otherwise affirms, **it may nevertheless reach the merits of the ineffectiveness issue where (a) as in paragraph (1) above, the record affirmatively shows ineffectiveness of constitutional dimensions,** or (b) the parties stipulate that the record is adequate and the court determines that findings of fact by a trial judge able to consider the demeanor of witnesses, etc. are not needed.
>
> (3) If, after affirmance as in paragraph (2) above, the defendant wishes to do so, he may then file an appropriate post-conviction proceeding raising the ineffective assistance of counsel issue. *See Berry v. State*, 345 So.2d 613 (MIss. 1977); *Callahan v. State, supra.* Assuming that his application states a claim, *prima facie*, he will then be entitled to an evidentiary hearing on the merits of that issue in the Circuit Court of the county wherein he was originally convicted./5 Once the issue has been formally adjudicated by the Circuit Court, of course, the defendant will have the right to appeal to this Court as in other cases. [emphasis supplied; text of note 5 omitted]

The following language found in the recent cases of **McLaurin v. State,** 31 So.3d 1263, 1266-67 (Ct.App.Miss. 2009) and **Drummond v. State,** 33 So.3d 507, 511-12 (¶¶14 and 15) control the posture of Conners's complaint:

> Drummond contends that defense counsel's failure to object when the State was attempting to elicit hearsay testimony from the victim amounted to ineffective assistance of counsel. Drummond also argues that defense counsel was ineffective because counsel never attempted to impeach Moffett with his prior testimony. This Court does not generally consider an ineffective-assistance-of-counsel claim on direct appeal.
>
> The Mississippi Supreme Court has stated that:
>
> It is unusual for this [c]ourt to consider a claim of ineffective assistance of counsel when the claim is made on direct appeal. This is because we are limited to the trial court record in our review of the claim[,] and there is usually insufficient evidence within the record to evaluate the claim. The Mississippi Supreme Court has stated that, where the record cannot support an ineffective assistance of counsel claim on direct appeal, the appropriate conclusion is to deny relief, preserving the defendant's right to argue the same issue through a petition for post-conviction relief. This Court will

> rule on the merits on the rare occasions where (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge."

Wilcher v. State, 863 So.2d 776, 825 (¶171) (Miss. 2003) (internal citations and quotations omitted). The record does not affirmatively indicate Drummond suffered denial of effective assistance of counsel of constitutional dimensions, and the parties have not stipulated that the record was adequate to allow the appellate court to make a finding without considering the finding of facts by the trial judge. Thus, we decline to address this issue without prejudice to Drummond's right to seek post-conviction relief, if he so chooses.

Drummond v. State, *supra*, 33 So.3d at 511-12 (¶ 15).

In the **McLaurin** case the Court of Appeals stated the following:

McLaurin raises twenty-three allegations of ineffective assistance of counsel. Without exhaustively listing each of McLaurin's assertions, we summarize his allegations using his own words: "defense counsel did little to avail himself of the evidence in the custody of the State, . . . much less conduct an independent investigation."

Mississippi Rule of Appellate Procedure 22(b) states:

> Issues which may be raised in post-conviction proceedings may also be raised on direct appeal if such issues are based on facts fully apparent from the record. Where the appellant is represented by counsel who did not represent the appellant at trial, the failure to raise such issues on direct appeal shall constitute a waiver barring consideration of the issues in post-conviction proceedings.

"Where the record is insufficient to support a claim of ineffective assistance, 'the appropriate conclusion is to deny relief, preserving the defendant's right to argue the same issue through a petition for post-conviction relief.' " *Wynn v. State,* 964 So.2d 1196, 1200 (¶9) (Miss.Ct.App.2007) (citing *Aguilar v. State,* 847 So.2d 871, 878 (¶17) (Miss.Ct.App. 2002)).

Several of McLaurin's allegations are based upon facts that are not fully apparent from the record: defense counsel failed to file a direct appeal or a motion for post-conviction relief after accepting a retainer and asserting the defense he was going to file the appeals; defense counsel did not review an incriminating photograph of McLaurin used at trial and did not file a motion

> to exclude the photograph; defense counsel failed to sufficiently investigate potential witnesses and relevant medical records; and defense counsel did not submit any jury instructions. The record contains no medical records, nor does it contain any statements by potential witnesses. Thus, we cannot address these issues on direct appeal. Because we cannot address several of McLaurin's ineffective assistance of counsel allegations on direct appeal, we find that McLaurin's ineffective assistance claim would be more appropriately brought in a petition for post-conviction relief, if he chooses to do so. Accordingly, we deny relief on this issue without prejudice."

McLaurin v. State, *supra*, 31 So.3d at 166-67 (¶¶ 14-17).

Because (1) the record fails to show ineffectiveness of constitutional dimensions and (2) *both* parties have not stipulated the record is adequate to allow the appellate court to make the necessary findings of fact, this Court need not rule on the merits of Conners's individual ineffective assistance of counsel claims. **Wynn v. State,** 964 So.2d 1196 (Ct.App.Miss. September 4, 2007); **Jones v. State,** 961 So.2d 730 (Ct.App.Miss. February 20, 2007).

Our position, in a nutshell, is that Conners has failed to demonstrate on direct appeal that any aspect of his two lawyers's performance was deficient in the constitutional sense and that the deficient performance, if any, prejudiced the defense. Started differently, the record, in its present posture, fails to affirmatively reflect ineffectiveness of constitutional dimensions.

2. Failure to object generally.

Counsels's failure to object are alleged lapses of omission as opposed to commission.

The following language articulated by the Court of Appeals in **Reynolds v. State,** 736 So.2d 500, 511 (Ct.App.Miss. 1999), ¶41, is *apropos* to the issue before the Court:

> "[T]here is no 'single, particular way to defend a client or to provide effective assistance.' " *Handley*, 574 So.2d at 684 (quoting *Cabello*, 524 So.2d at 317). Defense counsel is presumed competent. *Johnson v. State*, 476 So.2d 1195, 1204 (Miss. 1985). "There is no constitutional right then to errorless

> counsel . . . " *See Handley*, 574 So.2d at 683 (quoting *Cabello*, 524 So.2d at 315).* * *"

Also relevant here are the following observations made by Justice Cobb in **Jackson v. State,** 815 So.2d 1196, 1200 ¶8 (Miss. 2002):

> Our standard of review for a claim of ineffective assistance of counsel is a two part test: the defendant must prove, under the totality of the circumstances, that (1) his attorney's performance was deficient and (2) the deficiency deprived the defendant of a fair trial. *Hiter v. State*, 660 So.2d 961, 965 (Miss. 1995). This review is highly deferential to the attorney, with a strong presumption that the attorney's conduct fell within the wide range of reasonable professional assistance. *Id.* at 965. **With respect to the overall performance of the attorney, 'counsel's choice of whether or not to file certain motions, call witnesses, ask certain questions, or make certain objections fall within the ambit of trial strategy' and cannot give rise to an ineffective assistance of counsel claim.** *Cole v. State*, 666 So.2d 767, 777 (Miss. 1995). [emphasis ours]

See also **Harris v. State,** 822 So.2d 1129 (Ct.App.Miss. 2002).

It is well settled that complaints concerning counsel's failure to file certain motions, call certain witnesses, ask certain questions, and make certain objections fall within the amorphous zone and ambit of trial strategy. **Murray v. Maggio,** 736 F.2d 279 (5th Cir. 1984). A trial court has no duty to *sua sponte* second-guess decisions by defense counsel. **Pitchford v. State,** 45 So.3d 216 (Miss. 2010), reh denied.

Notwithstanding procedural bars, trial strategy, and the lack of a *prima facie* case of ineffectiveness, we proffer the following response on the merits.

a. Failure to object to forensic reports.

Connors complains he was denied his constitutional right to confront his accusers when firearms analyst's reports and a toxicology report were admitted into evidence without

objection. Such evidence, he opines, was testimonial in nature.

This question need not be decided here.

As noted previously, defense counsel did object prior to trial to the toxicology report on the grounds of a discovery violation.

In addition, it is reasonably foreseeable that counsels's failure to object was a matter of trial strategy. The fact the toxicology report stated that Connors had oxycodone and opiate metabolite in his system when taken to the hospital was consistent with his claim in the video interview that the murderers had stuffed pre-crushed pills down Connors's throat thus causing a two day drug induced sleep. Moreover, as part of Connors's defense, it was brought out during cross-examination of Detective Haygood that Conners had prescriptions for both oxycodone and morphine. (R. 382)

As for the ballistics reports, the findings and conclusions were just as consistent with Connors's innocence as with his guilt.

> "The shotgun shells in Submissions 30 through 34 bear some similarities in class characteristics consistent with those produced by the gun in Submission 24. However, the shotgun shells in submission 30 through 34 could not be positively included or excluded as having been fired in the gun in submission 24 to the exclusion of all other firearms bearing the same class characteristics."

We agree that Conners has a Sixth Amendment fundamental right to confront the witnesses against him. But that right was not violated here even if the information in the reports was testimonial in nature. What else could Connors have asked had the analysts who conducted the tests and prepared the reports been present at trial? Connors has failed to demonstrate how he was prejudiced by this state of affairs. In this posture, aside from being inoculated from criticism on account of trial strategy, counsels's error, if any, in admitting the

criticized reports was clearly harmless beyond a reasonable doubt.

b. Failure to object to crime scene photographic identification.

According to Connors's video statement, New Orleans drug users looking for drugs entered the mobile home and shot the victims. It is entirely reasonable that Counsels's decision not to object to the crime scene photographs criticized here was a part and parcel of counsels's trial strategy to show the violent nature of a double homicide allegedly committed by a group of drug dealing thugs.

We note with interest that counsel filed a motion in *limine* prior to trial seeking to preclude introduction at trial of "pictures taken at the scene [that] are pictures of what purports to be a recipe for the manufacture of methamphetamine." (C.P. at 37-38) Counsel could have just as easily filed a similar motion seeking to preclude the introduction of any allegedly prejudicial photographs of the two victims. Because they did not, trial strategy provides a reasonable explanation for a failure to object.

Moreover, "[i]n order [t]o successfully prove [a claim of] ineffective counsel, the defendant must first prove that counsel had an obligation to object to the admittance of the evidence." **Williams v. State,** 819 So.2d 532 537 (¶14) (Ct.App.Miss. 2001). No such obligation existed in this case where the criticized photographs were admissible to show, *inter alia*, the nature and extent of the wounds inflicted, the crime scene in general, and the unusual and grotesque position of Kenneth Connors as testified to by Detective Haygood. (R. 300-01) The position of Connors's body was indicative of it having been pulled inside the mobile home and dumped in the living room after Connors was shot on the front porch where blood was found. (R. 300-01, 305-06)

Connors is well aware the admissibility of photographs rests within the sound

discretion of the trial judge whose decision will be upheld on appeal absent an abuse of that judicial discretion.

"The trial judge is granted broad discretion in ruling on the admissibility of photographs." **Gossett v. State,** 660 So.2d 1285, 1292 (Miss. 1995) [Photographs contain probative value when they supplement or add clarity to witness' testimony.] *See also* **McDowell v. State,** 813 So.2d 694, 699 (Miss. 2002), reh denied ["Photographs have evidentiary value [in a homicide prosecution] where they aid in describing the circumstances of the killing and the *corpus delicti*, where they describe the location of the body and cause of death, and where they supplement or clarify witness testimony."]; **Stevens v. State,** 808 So.2d 908, 927 (Miss. 2002) ["Rather than being merely cumulative, the autopsy photograph served to clarify the pathologist's clinical observations of the path of the fatal bullet."]; **Davis v. State,** 660 So.2d 1228, 1259 (Miss. 1995); **Westbrook v. State**, 658 So.2d 847, 849 (Miss. 1995).

A trial court's ruling favoring admissibility will not be disturbed on appeal absent a clear abuse of that judicial discretion. **Noe v. State,** 616 So.2d 298 (Miss. 1993).

The general rule is contained in **Noe v. State**, *supra*, 616 So.2d at 303, where this Court opined:

> It is well settled in this state that the admission of photographs is a matter left to the sound discretion of the trial judge and that his decision favoring admissibility will not be disturbed absent a clear abuse of that judicial discretion. *Gardner v. State*, 573 So.2d 716 (Miss. 1990); *Sudduth v. State*, 562 So.2d 67 (Miss. 1990). **"A review of our case law indicates that the discretion of the trial judge runs toward almost unlimited admissibility regardless of the gruesomeness, repetitiveness, and the extenuation of probative value." [emphasis supplied]** *Williams v. State*, 544 So.2d 782, 785 (Miss. 1987).

While depicting a bloody and grotesque scene, the photographs were not, in our opinion, inordinately gruesome. But even if grisly, gruesome, and repetitive, they served a legitimate evidentiary purpose. Stated differently, they had probative value or a tendency to prove some relevant fact. Accordingly, trial counsel was not obligated to object.

An essential element of murder less than capital is, of course, malice aforethought or a deliberate design to kill. *See* Miss.Code Ann. Section 97-3-19 (a). Certainly relevant to this case was proof of malice or deliberate design. *See* jury instructions number 2 (S-3), number 15 (S-10(A); number 6 (S-11), and No. 7 (S-12). (C.P. at 48, 53-54, 55, 56) Needless to say, the photographs were admissible for this purpose. Again, defense counsel was under no duty or obligation to object to them.

c. Failure to object to alleged gang affiliation and criminal history.

Connors complains about counsel's failure to object to portions of the videotaped interview wherein Connors talks about his past gang membership, criminal activities and arrests.

Conners also whines that despite entering a stipulation regarding his status as a prior convicted felon, counsel failed to object to testimony regarding Connors's criminal history or to portions of the video statement in which he admits his criminal history. (Brief of the Appellant at 17-18)

These complaints are procedurally barred, but even if not they are devoid of merit on their merits for the reasons expressed in the recent case of **Harris v. State**, No. 2010-KA-00676-COA (¶¶ 20, 21, 22, 23, slip opinion at 13-14) decided October 4, 2011 [Not Yet Reported], where we find the following language:

Harris argues that the circuit court erred in admitting

> evidence of his prior convictions despite a valid stipulation. At trial, the State introduced the audio-recorded statement that Harris gave to the police where he admitted to his prior convictions for possession of a firearm by a convicted felon and possession of marijuana with intent to distribute. Prior to admitting the tape, the circuit court asked Harris if he had any objection. Harris stated that he did not. However, when the State played the tape for the jury, Harris objected to the portion related to his prior convictions.
>
> In **Sistrunk v. State,** 48 So.3d 557, 560 (¶10)(Miss.Ct.App. 2010), Joel Sistrunk's attorney filed a motion in *limine* to exclude testimony related to Sistrunk's prior convictions. The circuit court granted the motion; however, when the State sought to introduce Sistrunk's police statement that included a discussion of his prior convictions, his attorney failed to object to its admission. *Id.* at 560-61 (¶10). This Court held that the issue of whether the circuit court erred in admitting the statement was procedurally barred because Sistrunk's attorney failed to object to its admission. *Id.* T 561 (¶11).
>
> Harris's attorney initially stated that he had no objection to Harris's police statement being played at trial. Harris's attorney later objected to the portion of the tape related to Harris's prior convictions after it had been heard by the jury. While the State agree to stipulate that Harris was a convicted felon, the plain language of the stipulation did not preclude the State from presenting evidence of Harris's prior convictions./7
>
> Because Harris's attorney failed to object to the admission of the statement until after the jury had heard the portion of the tape containing Harris's prior convictions, Harris's argument that the circuit court erred in admitting the statement is procedurally barred. Procedural bar notwithstanding, the State never agreed to refrain from presenting evidence regarding the nature of Harris's prior convictions. Furthermore, any prejudice stemming from the admission of the taped statement was alleviated by the circuit court's granting a limiting instruction./8 [text of notes 7 and 8 omitted]

The same is true here to a great extent. The stipulation entered into between Conners's lawyers and the State reads as follows: "The court instructs the jury that the Defendant is a convicted felon, as such term applies in this case." (C.P. at 47)

It was true in **Harris** and it is equally true here that " . . . the plain language of the stipulation did not preclude the State from presenting evidence of Harris's prior convictions." *Id.* (¶22) slip opinion at 13-14.

Moreover, it was true in **Harris** and it is equally true here that "[Connors's] argument that the circuit court erred in admitting the statement is procedurally barred." *Id.* (¶23) slip opinion at 14.

In order for an appellate court to reverse on the grounds of ineffective assistance of counsel, there must be a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." **Chamberlin v. State,** *supra*, 55 So.3d 1046, 1050 (¶5) (Miss. 2010) (quoting **Mohr v. State,** 584 So.2d 426, 430 (Miss. 1991).

In this case neither the sufficiency nor the weight of the evidence has been argued on appeal. The evidence of Connors's guilt was simply overwhelming and included strong evidence, both direct and circumstantial. It cannot be said that "the outcome in this case would have been different" if Connors's lawyers had objected at trial.

3. Harmless Error.

A discussion of the harmless error doctrine appears *infra* on pages 16-17 of this brief. The evidence in this case preponderates heavily in favor of guilt, and any error committed by defense counsel could not have contributed one whit to Conners's conviction.

CONCLUSION

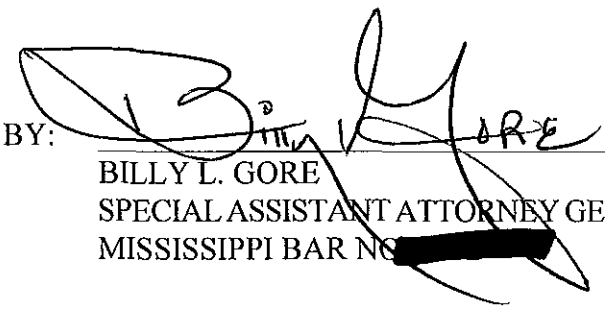
Appellee respectfully submits that no reversible error, if error at all, took place during the trial of this cause.

Conners was hopelessly guilty.

Accordingly, the judgments of convictions of double murder less than capital and two counts of possession of a firearm by a convicted felon, together with the two life sentences for the murder convictions and the two ten (10) year sentences imposed for the firearms charges, all to be served consecutively, should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above **BRIEF FOR THE APPELLEE** to the following:

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