

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COY MICHAEL EDMOND

APPELLANT

VS.

CAUSE NO.: 2008-KA-01027-COA

STATE OF MISSISSIPPI

APPELLEE

**REPLY BRIEF FOR APPELLANT**

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**CERTIFICATES OF INTERESTED PERSONS**

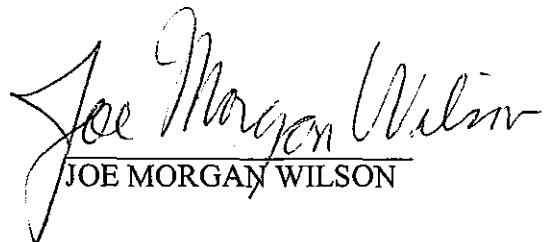
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Hon. Andrew K. Howorth  
Circuit Judge  
1 Courthouse Square, Suite 201  
Oxford, MS 38655

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Coy Michael Edmond  
Appellant

  
JOE MORGAN WILSON

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## **TABLE OF CASES AND OTHER AUTHORITIES**

*Bell v. State*, 963 So.2d 1124 (Miss. 2007)

*Hayes v. State*, 803 S 2d 473 (Miss. App. 2001)

*Jackson v. State*, 130 So. 729, 158 Miss. 524, (1930)

Rule 9.04 (e) Uniform Circuit and County Court Rules

## **STATEMENT OF THE CASE**

The alleged victim in this action was Heather Crews, a teenage girl who was living in Lafayette County, Mississippi. She was asked to babysit for the family of the Defendant, Coy Michael Edmond supposedly on February 4, 2006. She was babysitting for the Defendant's children when she claimed that the Defendant came out of the bedroom and approached her during which time they allegedly had sexual contact from which arose the charge of sexual battery against a female between the age of fourteen and sixteen years.

The Defendant was subsequently arrested, and later indicted by the Circuit Court of Lafayette County, Mississippi. He was tried on the charge of sexual battery on May 12<sup>th</sup> and 13<sup>th</sup>, 2008. He was found guilty of said charge from which this appeal has resulted.

## ARGUMENT

### I

The Appellee indicated that there was legally sufficient evidence of the age of the child victim in its heading under Argument I. The Appellee argued:

So, there was testimony under oath that the victim's birth date was May 16, 1990. The date of the offense was February 4, 2006.

The Appellee completely ignored the allegations of the Appellant that the child's testimony was hearsay and the adoptive mother, Judy Crew's, testimony was also hearsay. They failed to respond in any way whatsoever to the issue of hearsay raised by Appellant in his brief.

As was initially alleged before, it is the burden of the State of Mississippi to prove each and every element of the offense charged beyond a reasonable doubt. In this case a portion of the burden was to prove that the child was "at least fourteen but under sixteen years of age" and the State simply did not do so. Consequently, rather than properly argue this issue they simply ignored it.

The Appellee cited *Hayes v. State*, 803 S 2d 473 (Miss. App. 2001) wherein they state that the Court listed the testimony of the victim giving her birth date as credible, legally sufficient evidence. In reviewing said case the Appellant notices that they cited page 473, which unfortunately makes no statements whatsoever. The only thing that the Appellant can possibly assume the Appellee was referencing is at page 478 where LG testified concerning her birth date and verified that she was thirteen years old at the time of the intercourse with Hays.

Such authority is clearly misplaced. First of all, in that case it was a forcible rape making age irrelevant as to the issue of consent. Secondly, it does not appear that the Defendant in that case even raised the issue of proof of age. The Appellant reiterates: The State of Mississippi had a burden to prove beyond a reasonable doubt and because of this unique situation they failed to do so.

The argument should clearly stand.

## **ARGUMENT**

### **II**

Under Appellee's argument II they state that the defense did not ask for a continuance based on supposed discovery violations. He then cited *Bell v. State*, 963 So.2d 1124 (Miss. 2007). Unfortunately, once again he does not indicate what page in said nine page opinion the authority comes from. The Appellant can only believe that he is referring to page 1133 in which he indicates that if the Defendant thereafter believes that he may be prejudiced by the admission of the evidence because of his lack of opportunity to prepare to meet it, he must request a continuance . . . However, if the Defendant fails to request a continuance, he waives the issue. *Bell* At 1133.

The Appellee fails to acknowledge that there was action which the Court was obligated to take before the Defendant needed to request a continuance. Unfortunately the Court did not follow Rule 9.04 (e) Uniform Circuit and County Court Rules and did not therefore give the defense the opportunity to request a continuance. Once again the State has in their second argument ignored the intent and the concept articulated in the original Argument II of the Appellant's brief.

## **ARGUMENT**

### **III**

The Appellee in their Argument III alleged:

The Defendant waived any challenge of the competency of the victim/witness when he cross-examined the witness.

They then went on to say that:

At trial there is no objection to the testimony of the victim/witness. Then counsel for Defendant began his cross examination.

The Appellee does not seem to realize that the Court had already overruled his objection as to allowing them to proceed and allowing her to testify. Any further objections would have been ludicrous. The fact that Appellant's attorney attempted to impeach the witness was not indicating that he believed her to be a competent witness, but he was trying every way possible to defend his client in light of the failure of the State of Mississippi to follow the law found in Rule 9.04 (e) and then the trial Judge's failure to sustain his objection.

Appellee cites *Jackson v. State*, 130 So. 729, 158 Miss. 524, (1930) to show that the cross-examination by the Appellant waived his challenge to the competency of such a witness. In that case they were dealing with a fact witness and the issue should have been whether or not the child was competent to testify at all, since this child was only seven years old. In the case at bar the Appellant had already objected to the testimony at the beginning of the trial. He had no choice but to proceed to cross-examine her to the very best of his ability, because the Court had overruled his objection and had not followed Rule 9.04 (e) as hereinabove stated. Consequently, the issue was already objected to, was not waived and should still be fully alive for review.



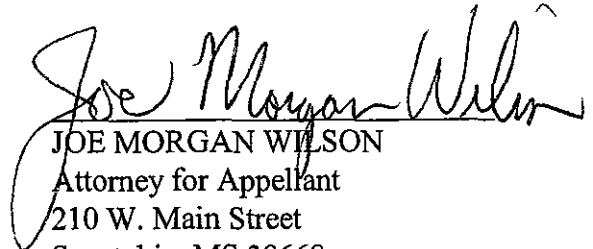

## CONCLUSION

The Defendant was convicted based upon the testimony of an admittedly mentally limited teenager. Her age at the time of the alleged offense was not proven beyond a reasonable doubt which was a crucial element to proving the crime of sexual battery. Appellee attempted to show that proof of age was sufficiently proven by the hearsay testimony of both the victim/witness and her adoptive mother. It should be clear that proof beyond a reasonable doubt cannot be secured by hearsay and nothing more. The Appellant was not in a position to ask for a continuance when the trial Judge did not follow the requirements of Rule 9.04 (e).

The Appellant had no choice but to cross examine the alleged victim/witness since the court had overruled his objection to her testimony. He had to do everything in his power to attempt to show that she was either not competent, not trustworthy or both since the court was going to have her testimony regardless of his objection. The Appellee has failed to show that the Appellant's arguments and objections should be waived but the issues remain alive for this Court to review.

Consequently, the trial court committed reversible error in allowing a conviction for which age was not proven, allowing the alleged victim to testify with limited mental capacity and with no examination whatsoever by the court as to whether or not she was a competent witness. Therefore the trial court committed several errors all of which cumulatively amount to reversible error. This case should be reversed and remanded for a new trial.

Respectfully submitted this the 23 day of March, 2009.

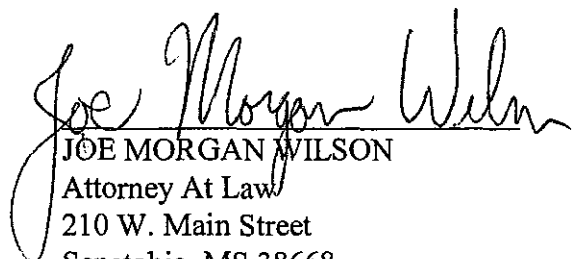

  
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**CERTIFICATE OF MAILING**

I, Joe Morgan Wilson, Attorney for Appellant COY MICHAEL EDMOND, certify that I have this day mailed by United States Mail, postage pre paid, the original and three copies of the forgoing attached Reply Brief For Appellant to the following:

Hon. Betty Sephton  
Supreme Court Clerk  
P. O. Box 117  
Jackson, MS 39205

This the 23 day of March, 2009.

  
JOE MORGAN WILSON  
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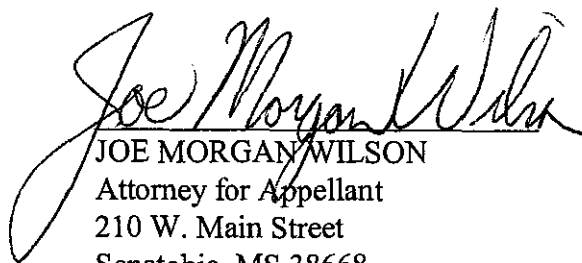
**CERTIFICATE OF SERVICE**

I, Joe Morgan Wilson, attorney for Appellant, COY MICHAEL EDMOND, certify that I have this day mailed by first class mail, postage prepaid, a true and correct copy of the foregoing and attached Brief For Appellant.

Hon. Andrew K. Howorth  
Circuit Judge  
1 Courthouse Square, Suite 201  
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This the 23rd day of March, 2009.

  
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