

**MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 1, 2022*****SUPREME COURT - CIVIL CASES*****DENHAM V. DENHAM****CIVIL - CUSTODY**

**FAMILY LAW - CUSTODY - TESTIMONY OF CHILDREN** - Courts cannot apply a per se exclusion of testimony simply because the witness is a child of the divorcing parents because such a per se prohibition risks offending due process

**FAMILY LAW - CUSTODY - TESTIMONY OF CHILDREN** - Before a chancery court can exclude the testimony of a child witness of tender years in a divorce proceeding, the chancery court must first determine whether the child is competent to testify

**FAMILY LAW - CUSTODY - IN-CHAMBERS INTERVIEWS OF CHILDREN** - For in-chambers interviews of children, a record must be made by a court reporter physically present during the in-chambers interview

**FAMILY LAW - CUSTODY - ALBRIGHT FACTORS** - While adultery may not be used as a sanction in custody awards, moral fitness encompasses the charge of adultery

**FACTS**

Becky and Jason Denham were married in 2002 and later separated in 2017. Three children were born to their marriage. Becky filed a complaint for divorce in November 2017 alleging only irreconcilable differences. The chancery court entered a temporary order that granted the parties joint legal and physical custody, and an order appointing a guardian ad litem (“GAL”). In February 2018, Becky filed an amended complaint which added allegations of the fault-based grounds of adultery and habitual cruel and inhuman treatment. Jason did not file an answer, nor did he assert any affirmative defenses to the initial or amended complaint. A month before trial, Jason’s counsel filed a motion to withdraw and the GAL also filed a motion to withdraw. In November 2018, on the first day of trial, the chancery court heard testimony from the GAL. Jason had not obtained new counsel and moved for a continuance. The motion was denied, and Jason represented himself pro se. After the GAL’s testimony, the chancery court ordered the trial to reconvene later that month. By that time, Jason had retained new counsel. After testimony from family and people close to the parties, Jason requested the chancery court interview the children on the record, which Becky objected to. The chancery court interviewed the children in camera but denied Jason’s request for the interview to be on the record. Before meeting the children, the chancery court determined that it was not in the children’s best interests to testify. The chancery court interviewed the children off the record and out of the presence of the parties, with only the parties’ counsel and a court staff attorney present. The chancery court entered an order which granted Becky a divorce on the ground of uncondoned adultery. The order also awarded the parties joint legal custody of the three minor children and granted Becky sole physical custody with Jason being awarded visitation agreed upon between the parties. In making the custody determination, the chancery court found that the *Albright* factors were either neutral or favored Becky. Jason appealed and the Court of Appeals affirmed the chancery court’s judgment. Jason petitioned for writ of certiorari.

**ISSUES**

Whether the (1) judgment regarding the children’s testimony and interviews is in conflict with Supreme Court decisions and (2) chancery court erred in excluding evidence of Becky’s extramarital affairs to show moral fitness.

**HOLDING**

(1) Because the chancery court’s determination that the children were incompetent to testify and that testifying was not in their best interest before interviewing them clearly contravened mandates in case law, and because the chancery

court's refusal to record the in-chambers interview with the children by use of a court reporter clearly contravened mandates in case law, the chancery court applied an erroneous legal standard in coming to the determination that the children would not testify. (2) Because the chancery court did not use the moral fitness factor as a sanction against Jason or as the sole basis of the custody determination, and because, even if the moral fitness factor was neutral or favored Jason, the remaining *Albright* factors favoring Becky still weighed the total determination in Becky's favor, the chancery court did not commit reversible error in excluding evidence of Becky's extramarital affairs. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Lamar County Chancery Court.

**Affirmed in Part; Reversed & Remanded in Part - 2020-CT-00675-SCT (Dec. 1, 2022)**

En Banc Opinion by Presiding Justice King

Hon. Deborah J. Gambrell (Lamar County Chancery Court)

Jeffrey Birl Rimes & Sarah Lindsey Hammons for Appellant - John D. Smallwood for Appellee

Briefed by [Morgan Rushing](#)

[Click here to view the full opinion](#)

## **WATERCOLOR SALON LLC V. HIXON**

### **CIVIL - CONTRACT**

**CONTRACTS - FORMATION - MINOR** - Under Miss. Code Ann. § 1-3-27, anyone under the age of twenty-one is a minor and public policy gives a minor the right to disaffirm a contract to protect the minor from his own improvidence and the overreaching of adults

**CONTRACTS - CAPACITY - PERSONAL PROPERTY** - Under Miss. Code Ann. § 93-19-13, all persons eighteen years of age or older, if not otherwise disqualified, or prohibited by law, shall have the capacity to enter into binding contractual relationships affecting personal property

### **FACTS**

Watercolor Salon LLC ("Watercolor"), a hair salon, has two locations, one in Jackson and one in Ridgeland. Nealie Hixon began working for Watercolor in September 2020. Six months later, Hixon signed an employment, confidentiality, and noncompetition agreement which stated that upon the termination of her employment, she would not be permitted to work for another competing hair salon within a fifteen-mile radius of Watercolor's locations for three years. The agreement also protected Watercolor's intellectual property rights and prohibited Hixon from stealing trade secrets from Watercolor. Hixon was twenty years old when she signed the agreement. Hixon resigned in July 2021 and began working for another salon in Brandon. Watercolor learned that Hixon had begun working for another salon and told Hixon she must immediately stop working there because the salon was within the prohibited fifteen-mile radius. Hixon refused, arguing that the salon was located eighteen miles away by car. Watercolor filed a complaint for temporary, preliminary, and permanent injunctive relief and for other claims and damages against Hixon. The trial court denied Watercolor's request for temporary and preliminary injunctive relief and held that the noncompetition agreement was unenforceable against Hixon because she was a minor when she signed it. Further, the trial court held the agreement did not fall under the statutory exception allowing minors to enter enforceable contracts affecting personal property. Watercolor petitioned for interlocutory appeal.

### **ISSUE**

Whether the trial court erred by finding the employment, confidentiality, and noncompetition agreement unenforceable because Hixon was under twenty-one years old when she entered the agreement.

### **HOLDING**

Because the agreement was an employment contract affecting Hixon's right to work and not her personal property, and because Hixon was a minor when she entered the employment contract, the trial court did not abuse its discretion when it denied Watercolor's motion. Therefore, the Supreme Court affirmed and remanded the judgment of the Madison County Circuit Court.

## **CONCURRENCE IN PART & DISSENT IN PART**

Chief Justice Randolph agreed with the majority that the trial court did not abuse its discretion by denying Watercolor's request for a temporary restraining order and preliminary injunction. However, he argued that Hixon's age alone should not have been the sole reason why the contract should not have been enforced. He further argued that the statutory language and case law supported a finding that the employment, confidentiality, and noncompetition agreement affected personal property. Therefore, he opined that the trial court erred when it found that Hixon was not bound by the agreement with Watercolor due solely to her age.

### **Affirmed & Remanded - 2021-IA-01151-SCT (Dec. 1, 2022)**

En Banc Opinion by Justice Maxwell - Concurrence in Part & Dissent in Part by Chief Justice Randolph

Hon. Dewey Key Arthur (Madison County Circuit Court)

Roy H. Liddell & Michael David Anderson for Appellant - Michael A. Heilman & Daniel James Hammett for Appellee

Briefed by [Madison McLean](#)

[Click here to view the full opinion](#)

---

## ***SUPREME COURT - ORDERS***

### **LODEN V. STATE**

#### **EN BANC ORDER**

#### **ORDER**

The Supreme Court granted the State's motion to set an execution date for Thomas Edwin Loden, Jr., noting that Loden had exhausted all state and federal remedies for purposes of setting an execution date. The Supreme Court ordered that the execution of the death sentence, imposed upon Loden, take place in a manner provided by law on Wednesday, December 14, 2022, at 6:00 p.m. CST, or as soon as possible thereafter within the next twenty-four hours.

#### **OBJECTION**

Presiding Justice King disagreed that Loden had exhausted all state and federal remedies for purposes of setting an execution date, stating that the Supreme Court should not have set Loden's execution date while Loden's method-of-execution § 1983 case was pending in federal court. He argued that the Supreme Court had not determined whether: (1) a pending federal §1983 method-of-execution lawsuit was an unexhausted remedy under the statute and (2) a §1983 method-of-execution case required further federal review. He additionally argued that due process notice concerns were present, as the seven days legally provided to Loden to challenge the chosen method of execution were not a meaningful opportunity. Further, he argued that the Supreme Court should not assume that Loden's federal method-of-execution claims were frivolous or failed to state a claim. Rather, he argued that the Supreme Court should stay Loden's execution until there was a final resolution of Loden's federal method-of-execution claims.

### **Granted - 2002-DP-00282-SCT Consolidated With 2006-CA-00432-SCT (Nov. 17, 2022)**

En Banc Order by Chief Justice Randolph - Objection by Presiding Justice King

Briefed by [Joe M. Curry II](#)

[Click here to view the full opinion](#)

**MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 29, 2022**  
**COURT OF APPEALS - CIVIL CASES**

**DURANT HEALTHCARE, LLC V. GARRETTE**

**CIVIL - CONTRACT**

**ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION - CONTRACT PRINCIPLES** - To determine whether there is a valid arbitration agreement, courts apply the legal principles of contract law

**CONTRACT LAW - FORMATION - MENTAL COMPETENCY** - A party seeking to avoid the execution of a contract on the basis of a lack of mental competency bears the burden of proving that when the document is signed, the party is not mentally competent to manage the ordinary affairs of one's life

**CONTRACT LAW - FORMATION - AGENCY RELATIONSHIP** - In order to an agency relationship, thus giving a party the authority to represent another party in the signing of a contract, the claim must be supported by facts in the record giving an independent assertion that the party is an agent

**FACTS**

Zion Garrette became permanently disabled while in his fifties, afflicted by rhabdomyolysis while also being diagnosed with bipolar disorder. In May 2017, Zion was treated at a hospital in Grenada and exhibited mental confusion. Dr. Frank Brown, during his stay, described him as confused but able to verbalize a little bit. Dr. Brown also said Zion was alert and oriented to person, place, and time while exhibiting normal behavior. Later that month, medical records indicated that Zion had impaired mental status with decreased orientation. In June 2017, another doctor, Dr. Elias Abboud determined Zion to be alert and oriented to person, time, and place. From May to June of 2017, Zion was treated for multiple conditions, one of which being encephalopathy which is a disease that affects one's mental state. On June 15, 2017, Zion was brought to Durant Healthcare, a long-term care facility, by his daughter Carter Garrette, for admission to the facility. Durant Healthcare had both Zion and Carter sign an admissions document that included an arbitration agreement. Zion's signature was almost illegible. Upon admission, Nurse Practitioner Amy Johnson at the facility performed an exam but made no notes as to Zion's cognitive abilities. Nurse Palmertree completed a summary of Zion's condition during his first six days in the facility and described him being disoriented as to time and place as well as short-term memory problems, the inability to name the current season, the location of his room, or the fact that he was in a nursing home. Later in June 2017, Dr. Todd Fulcher noted that Zion's cognition and processing were limiting him. An occupational therapist during that same time noted that he was largely nonresponsive verbally. In July 2017, Zion began speech therapy in which he performed poorly. Dr. Fulcher noted his altered mental state and recorded his incorrect answers to person, place, and time. Lana Richardson, a social worker, in her assessment of Zion indicated that he had a history or was exhibiting malfunctions in his cognitive or behavioral functions. He did not improve during the next two years and ultimately died in the care of Durant Healthcare in July 2019. On his death certificate, the causes of death included cardiopulmonary arrest, decubitus ulcers with infection, dementia, and malnutrition. In January 2021, Deaundray Garrette, Zion's son, filed a wrongful death lawsuit against Durant Healthcare. Durant Healthcare filed a motion to compel arbitration. Durant Healthcare alleged that Zion had the mental capacity to sign the agreement and that Carter signed an acknowledgment that Zion had the requisite mental capacity to enter into the agreement. Durant Healthcare also contended that Carter represented herself to be Zion's authorized agent. Durant Healthcare also asserted that Zion was a third-party beneficiary of the contract and thus his estate and heirs were estopped from denying the enforceability of the arbitration agreement. Durant Healthcare also sought further discovery on Zion's mental capacity at the time of admission and the circumstances surrounding the execution of the documents. The circuit court heard arguments on the motion to compel arbitration and ultimately ruled that Zion was not competent to sign the agreement and that Zion had not conferred any authority on Carter to sign on his behalf. The circuit court dismissed the motion to compel and the motion for arbitration-related discovery. Durant Healthcare appealed.

**ISSUES**

Whether Zion (1) possessed the legal capacity to sign the arbitration agreement and (2) conferred any authority on his daughter, Carter, to sign the admission agreement as Zion's legal representative.

### **HOLDING**

(1) Because the record contained Durant Healthcare's own assessments of Zion's incapacity, because the assessments were made on the day that Zion signed the agreement, because the assessments showed that Zion was not competent to either sign the agreement himself, or appoint an agent, and because Durant Healthcare failed to present any evidence to the contrary, the circuit court did not abuse its discretion by finding Zion mentally incompetent and denying Durant's motion for arbitration-related discovery. (2) Because Durant Healthcare failed to present evidence establishing Carter as Zion's agent by way of her own independent statement, a previously executed form or document, or an affidavit, and because the circuit did not err in finding Zion lacked the mental capacity to sign the agreement or appoint an agent on the day of the signing, Durant Healthcare failed to establish the existence of an agency relationship between Zion and Carter, and the circuit court did not err by finding that the agreement was invalid, or in denying Durant Healthcare's motion to compel arbitration. Therefore, the Court of Appeals affirmed the judgment of the Holmes County Circuit Court.

### **DISSENT**

Presiding Judge Carlton argued that the circuit court abused its discretion in denying Durant Healthcare's motion for arbitration-related discovery prior to ruling on Durant's motion to compel arbitration. She opined that because the medical records conflicted and lacked a capacity determination made by a treating physician, because Carter executed an acknowledgment representing that her father had never been declared mentally incompetent, because Carter executed the agreement as Zion's actual authorized agent and responsible party, and because Durant was strictly prohibited from engaging in any form of discovery without permission or risking waiver of the arbitration agreement, she found that the arbitration related-discovery was necessary in order for Durant Healthcare to ensure all relevant evidence was presented.

#### **Affirmed - 2021-CA-00823-COA (Nov. 29, 2022)**

En Banc Opinion by Judge McDonald - Dissent by Presiding Judge Carlton

Hon. Barry W. Ford (Holmes County Circuit Court)

Joseph Spencer Young Jr. for Appellants - Richard Paul Williams III and Courtney McReynolds Williams for Appellee

Briefed by [Micah McGaha](#)

[Click here to view the full opinion](#)

## **LAMY V. LAMY**

### **CIVIL - CUSTODY**

**FAMILY LAW - CUSTODY - GUARDIAN AD LITEM** - Pursuant to Miss. Code Ann. § 43-21-121(3), a guardian ad litem shall make recommendations to the court or enter reports as necessary to hold paramount the child's best interests; the guardian ad litem should make recommendations only after providing the court with all material information which weighs on the issue to be decided by the court

**FAMILY LAW - CUSTODY - JOINT PHYSICAL CUSTODY** - Pursuant to Miss. Code Ann. § 93-5-24(5)(c), joint physical custody means that each of the parents shall have significant periods of physical custody so as to ensure the parents have frequent and continuous contact with the child

**FAMILY LAW - CUSTODY - JOINT LEGAL CUSTODY** - Pursuant to Miss. Code Ann. § 93-5-24(5)(e), joint legal custody means that parents share the decision-making rights, the responsibilities, and the authority relating to the health, education, and welfare of a child

### **FACTS**

Phillip and Elizabeth Lamy were married and had three minor children. The couple filed for divorce in 2015. An agreed custody order was entered without the necessity of trial in September 2019. In April 2020, Phillip filed a complaint for modification and for contempt, alleging that Elizabeth failed and refused to comply with the agreed order. Furthermore,



Phillip alleged the custody order should be modified, following material changes in Elizabeth's home that adversely affected the children, such as Elizabeth not working and receiving disability payments. Therefore, Phillip requested that he receive physical custody of the children with standard visitation rights available to Elizabeth and child support payments from Elizabeth. Elizabeth responded to Phillip's complaint with a counter-claim for modification. Elizabeth denied the allegations by Phillip and stated she was acting in the best interest of the children. Elizabeth also claimed there had been a material change in circumstances warranting a modification. Elizabeth alleged that Phillip did not maintain a consistent, punctual, or disciplined approach with the children's school work, and as a result, all three fell behind during COVID-19. Because of this, Elizabeth stated she kept the children during the school week despite the agreed order. Elizabeth also alleged that Phillip harassed her, that he allowed the children to engage with age-inappropriate music, games, and videos, and that Phillip did not maintain the children's hygiene. Therefore, Elizabeth requested that she be granted primary custody of the children with Phillip to have appropriate visitation. The chancery court entered a temporary order that re-appointed a guardian ad litem ("GAL") to investigate the allegations and set the terms for summer visitation. During the trial, the GAL testified that, upon her investigation, she believed that Phillip failed to meet his burden and, therefore, modification of physical custody was not appropriate and that the visitation schedule from September 2019 was not working in the children's best interests. The chancery court denied Phillip's requested relief and held that physical custody of the children should remain with Elizabeth subject to Phillip's modified visitation, which was every other weekend. Phillip appealed.

### ISSUES

Whether the chancery court erred in (1) denying Phillip's motion to exclude evidence attached to the GAL report and utilized by the GAL not disclosed in discovery; (2) classifying the parties' agreed order of custody from September 2019 and treating it as a temporary order rather than a permanent order; (3) interpreting the parties' agreed custody order from September 2019; and (4) failing to find Elizabeth in contempt of the September 2019 agreed custody order.

### HOLDING

(1) Because there was no indication that the GAL reviewed anything that was not provided to her to fulfill her duties under Miss. Code Ann. § 43-21-121(3), because the GAL attached to her report everything that she looked at and considered throughout her investigation, because Elizabeth's attorney introduced no new documents at trial that were improperly disclosed during discovery, and because Phillip's attorney declined additional time for review of the GAL report, the issue was without merit. (2) Because any confusion about whether the order was temporary or permanent was eliminated and made clear to both parties, the argument was without merit. (3) Because the language of the agreed custody order gave the parents equal rights in making decisions affecting the children, because the agreed order expressly granted the parties joint legal custody, and because the remainder of the terms described and provided for the parents to share joint physical custody, Phillip and Elizabeth were awarded joint legal custody and joint physical custody and the chancery court erred by interpreting the agreed custody order to award sole physical custody to Elizabeth. (4) Because of the testimony and report presented by the GAL, which corroborated Elizabeth's testimony concerning the children's education, because of the conflicting testimony regarding the children's therapy sessions, and because there was no request for Elizabeth to be held in contempt for her inadequate completion of her financial declaration, the chancery court did not err by not finding Elizabeth in contempt. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Harrison County Chancery Court.

### CONCURRENCE IN PART & DISSENT IN PART

Presiding Judge Wilson argued that Elizabeth was in contempt when she willfully violated a court order regarding child custody after she made the unilateral decision to deny Phillip custody from March 2020 through May 2020. He further opined that Elizabeth failed to present a recognized defense to Phillip's petition for contempt. Therefore, because Elizabeth was in contempt, he would have reversed and remanded the case to determine whether Phillip should have been awarded attorney's fees for the contempt issue.

#### **Affirmed in Part; Reversed & Remanded in Part - 2021-CA-00770-COA (Nov. 29, 2022)**

En Banc Opinion by Judge Emfinger - Concurrence in Part & Dissent in Part by Presiding Judge Wilson

Hon. Jennifer T. Schloegel (Harrison County Chancery Court, First Judicial Dist.)

William Brian Atchison for Appellant - Donald Wayne Medley for Appellee

Briefed by [Sierra Albano](#)

## MIXON V. BERRY

### CIVIL - MEDICAL MALPRACTICE

**TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY** - To establish a prima facie case for a medical malpractice action on a summary judgment motion, the plaintiff must prove a duty to conform to a specific standard of conduct, failure to conform to that standard, and an injury proximately caused by the breach of duty; the plaintiff is required to produce sworn expert testimony supporting his or her claim in order to establish a prima facie case of malpractice

**TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY** - Without expert testimony establishing a prima facie case of medical negligence, no genuine issue of material fact exists

**CIVIL PROCEDURE - CONTINUANCES - AFFIDAVITS IN SUPPORT** - Pursuant to Miss. R. Civ. P. 56(f), movants must file an affidavit in support of motions seeking a continuance to allow additional discovery

**CIVIL PROCEDURE - MOTION TO RECONSIDER - BURDEN OF PROOF** - On a motion to set aside or reconsider an order granting summary judgment, the movant has the burden to show (i) an intervening change in controlling law, (ii) availability of new evidence not previously unavailable, or (iii) need to correct a clear error of law or to prevent manifest injustice

### FACTS

Dr. Michael Berry performed an operation on Gregory Mixon. Approximately two years later, Mixon filed a complaint against Berry alleging medical negligence arising out of the procedure. Berry filed an interrogatory requesting identification of expert witnesses. Mixon objected to the interrogatory and stated that he had not yet made decisions about trial experts. Berry moved for summary judgment, arguing that Mixon had failed to include medical expert testimony in the record, thereby leaving no genuine issue of material fact. Mixon responded with a motion to set trial, and an additional motion opposing summary judgment. The day before the summary judgment hearing, Mixon filed an expert designation that summarized one expert's expected testimony. The trial court found that the expert designation filed was insufficient evidence of expert testimony because it did not include an affidavit and was only signed by Mixon's attorney. The trial court granted summary judgment in favor of Berry because of the lack of expert opinions. Mixon filed an unsuccessful motion to reconsider. Mixon appealed.

### ISSUES

Whether the trial court (1) erred when it granted summary judgment in favor of Dr. Berry and denied Mixon's motion for reconsideration; (2) should have permitted Mixon's medical negligence claim to proceed and erred by failing to grant Mixon a continuance to allow him to obtain an expert affidavit; and (3) erred by denying Mixon's motion for reconsideration.

### HOLDING

(1) Because Mixon did not produce any sworn expert testimony and thus failed to establish the applicable standard of care, breach thereof, and proximate cause of the resulting injury as required to oppose summary judgment for medical negligence, and because the expert designation by Mixon was signed only by his attorney and contained hearsay as to what Mixon expected the expert's testimony to be, Mixon failed to produce sufficient competent evidence to overcome summary judgment. (2) Because Mixon did not file a Miss. R. Civ. P. 56(f) motion for continuance prior to the hearing on the motion for summary judgment, and because Mixon never raised a motion to the trial court requesting a continuance, the issue was without merit. (3) Because Mixon did not claim an intervening change in law, availability of new evidence, or a need to correct a clear error, the trial court did not abuse its discretion in denying Mixon's motion for reconsideration. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

**Affirmed - 2021-CA-00494-COA (Nov. 29, 2022)**

Opinion by Judge Smith

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)  
Scherrie Lonnette Prince for Appellant - Tommie Gregory Williams Jr. & Harris Frederick Powers III for Appellee  
Briefed by [Holdon Guy](#)

[Click here to view the full opinion](#)

---

## ***COURT OF APPEALS - CRIMINAL CASES***

### **DAVIS V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - CROSS-EXAMINATION - RELEVANCY** - A defendant in a criminal trial has a fundamental right to cross-examine the witnesses testifying against the defendant, but the right is not unbounded; the right to cross-examine witnesses is always subject to the trial court's inherent power to limit cross-examination to relevant factual issues

**CRIMINAL PROCEDURE - CROSS-EXAMINATION - CONFRONTATION CLAUSE** - The Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish

#### **FACTS**

In 2018, Ashanti Jones and Lonnie Taylor were driving when Jones heard multiple gunshots and the sound of breaking glass. Their car began to swerve and came to a halt when it crashed into a house. Taylor was dead at the scene. Jones was taken to the police station for questioning but could not offer any information regarding the shooters. The same night, Sonata Lewis and Monya Davis were driving with AC and Marshun Carr. Lewis testified that the three men each had a gun and were complaining about the truck behind them. She claimed they exited the car and began shooting at another vehicle. She stated that after the shooting, the group attempted to hide the guns. Detective Daryl Owens, along with other law enforcement officers, investigated the incident. Detective Owens testified that Davis, Lewis, AC, and Marshun were involved in the shooting of Taylor. Detective Owens also testified that Lewis was questioned and identified Davis, AC, and Marshun as the shooters and that Davis had also been identified as a suspect in Taylor's murder by a Crime Stopper's tip. During the cross-examination of Detective Owens, the trial court consistently directed defense counsel to limit his questions to relevant matters. A year after Taylor's murder, Davis was arrested in Texas and brought back to Mississippi. Davis signed a waiver of his rights and voluntarily gave a statement to Detective Owens. Eventually, Davis admitted that he, Lewis, AC, and Marshun were in the car the night of the shooting. Davis claimed that AC and Marshun were the shooters. Davis also claimed that he did not find out about Taylor's death until days later. Davis stated that he did not tell his story sooner because he and his family had been threatened. Davis denied having a gun the night of the shooting, denied telling his mother about the shooting, denied knowing what happened to the guns used in the shooting, and asserted that he was already in the process of moving to Texas for his job. Davis was convicted of first-degree, deliberate design murder of Taylor and sentenced to life in prison. Davis appealed.

#### **ISSUE**

Whether the trial court erred in limiting the defense's cross-examination of Detective Owens.

#### **HOLDING**

Because the record did not support Davis's claim as to the limits imposed by the trial court's ruling, and because Davis failed to present authorities addressing the ruling on the relevance of the line of questioning, the trial court did not abuse its discretion by limiting Davis's cross-examination of Detective Owens to relevant matters. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2021-KA-00908-COA (Nov. 29, 2022)**

Opinion by Judge Emfinger



Hon. Eleanor Johnson Peterson (Hinds County Circuit Court, First Judicial Dist.)  
Zakia Butler (Pub. Def. Office) for Appellant - Casey B. Farmer (Att’y Gen. Office) for Appellee  
Briefed by [Caitlyn Dills](#)

[Click here to view the full opinion](#)

## TURNAGE V. STATE

### CRIMINAL - FELONY

**APPELLATE PROCEDURE - APPEALS - LINDSEY BRIEF** - In accordance with *Lindsey*, as a part of the brief filed in compliance with Miss. R. App. P. 28, appellate counsel must certify that there are no arguable issues supporting the client’s appeal, and she has reached this conclusion after scouring the record thoroughly

**CRIMINAL PROCEDURE - MIRANDA RIGHTS - CROSS-EXAMINATION** - For the purposes of cross-examination regarding post-arrest silence, when a defendant chooses to testify at trial, the right to remain silent embodied in *Miranda* arises only if a defendant is questioned by law enforcement and if the defendant is given his *Miranda* warnings

### FACTS

Amber Turnage was found guilty of two charges of sexual battery of a minor and sentenced to serve two concurrent fifteen-year sentences. Turnage filed a motion for judgment notwithstanding the verdict (“JNOV”). She raised several non-specific errors and also argued that the trial court erroneously allowed the State to impeach her during cross-examination as to her post-*Miranda* silence. Turnage asserted that the State improperly questioned her after her arrest and that this questioning violated her constitutional right to remain silent. The State argued that for the purposes of cross-examination regarding post-arrest silence when a defendant chooses to testify at trial, the right to remain silent arose only if a defendant was questioned by law enforcement and if the defendant was given *Miranda* warnings. However, Turnage was never questioned by law enforcement, but instead, she picked up her indictment and was released from detention the same day. Therefore, the State argued it was permitted to question Turnage at trial. The trial court agreed and denied Turnage’s motion for JNOV or a new trial. Turnage appealed. Turnage’s appellate counsel filed a *Lindsey* brief after finding no arguable issues for appeal. Turnage was given the opportunity to file a supplemental pro se brief or identify any issues on appeal but did not.

### ISSUE

Whether there were any arguable issues for appeal.

### HOLDING

Because Turnage’s appellate counsel filed a brief in compliance with Miss. R. App. P. 28 and certified that she thoroughly reviewed the record, found no appealable issues, and mailed a copy of the brief to Turnage, because Turnage did not file any pro se brief, and because the Court of Appeals undertook an independent and thorough review of the record and found no issues that warranted reversal, Turnage’s convictions and sentences were affirmed. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

### Affirmed - 2021-KA-01229-COA (Nov. 29, 2022)

Opinion by Judge McDonald

Hon. Adrienne Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)

Zakia Helen Annyce Butler (Pub. Def. Office) for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Constance Hartline](#)

[Click here to view the full opinion](#)

**MISSISSIPPI CASES EDITOR**

**EMILY DUCK**

**ASSOCIATE CASES EDITORS**

**CHASE BAKER**

**KELSEY DAVIS**

**MORGAN ARRINGTON JONES**

**DALLAS MARTIN**

**REGAN MONK**

**J. EVAN THOMAS**

*Thank you for supporting the Mississippi Law Journal.*

*Questions or comments: Emily Duck, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)*

*All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007.*

*Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Emily Duck, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org). If you have questions about accessing or using the BriefServ website, please contact us at [support@mississippilawjournal.org](mailto:support@mississippilawjournal.org)*