

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TREVARUS CIJUAN DANIELS

APPELLANT

VS.

NO. 2009-KA-0692-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUE

- I. DANIELS MAY NOT CLAIM A *BATSON* VIOLATION FOR THE FIRST TIME ON APPEAL.**

STATEMENT OF FACTS

On the night of July 28, 2008, Trevarus Cijuan Daniels and three other men committed an armed robbery at Campbell Hill Grocery Store. Store owner Chester Smith yelled for his wife to bring the shotgun, and the four robbers fled the scene. T. 64. Smith could not identify the robbers because Daniels and his cohorts had “sock boggins” over their heads. T. 63. However, the morning after the robbery, Daniels admitted to his mother that he had done something stupid. T. 78. Specifically, Daniels told his mother that he tried to rob the Campbell Hill store. T. 79. Daniels subsequently gave a statement to Officer Michael Spellman in which he admitted planning and participating in the armed robbery. Ex. S-2, T. 153-155.

Daniels was indicted for armed robbery, and his trial commenced on April 15, 2009. The

aforementioned facts along with additional corroborative evidence were presented by the State at trial. Daniels testified in his own defense. He claimed that although he gave a statement to police in which he admitted planning and participating in the armed robbery, the chief of police made up his confession and told him what to say. T. 141-143. Daniels also testified that everyone who testified against him was lying. T. 152. The jury deliberated for forty minutes before returning a verdict of guilty of armed robbery. T. 193.

SUMMARY OF ARGUMENT

Because Daniels did not object at trial to the State's use of peremptory challenges, he is procedurally barred from arguing for the first time on appeal that the State committed a *Batson* violation. Additionally, Daniels has not shown that plain error, as the record is devoid of any indication that the State used its peremptory strikes with discriminatory intent.

ARGUMENT

I. DANIELS MAY NOT CLAIM A *BATSON* VIOLATION FOR THE FIRST TIME ON APPEAL.

Daniels claims for the first time on appeal that the State's use of peremptory strikes against females and African Americans demonstrates a pattern of gender and race discrimination. Daniels' failure to object to the State's use of peremptory challenges at trial bars him from claiming for the first time on appeal that the State used its peremptory challenges to purposefully remove females and African Americans from the venire. *Ross. v. State*, No. 2007-KA-01889-COA (¶19) (Miss. Ct. App. Aug. 11, 2009) (citing *Thorson v. State*, 895 So.2d 85, 118(¶ 81) (Miss.2004). See also, *Fillyaw v. State*, 10 So.3d 986, 988 -989 (¶14) (Miss. Ct. App. 2009). Even where a defendant objects to the State's use of peremptory challenges at trial, if the objection is not raised immediately after the State exercises its peremptory strikes, the objection is untimely and the appellant is barred from arguing

that the State committed a *Batson* violation. *Anderson v. State*, 1 So.3d 905 (¶18) (Miss. Ct. App. 2008).

Daniels acknowledges defense counsel's failure to raise a *Batson* objection, but relying on *McGee v. State*, 953 So. 2d 211 (Miss. 2007), claims that this honorable Court may consider the assignment of error under the plain error doctrine. In *McGee*, however, the prosecutor explicitly stated on the record that she was striking a particular juror based on gender. Clearly, in such a case there is error which is plain. In the present case, there is simply nothing in the record to indicate that the State's use of peremptory challenges was for the purpose of striking minorities from the venire. The venire pool was made up of 8 black males, 15 white males, 14 black females, and 19 white females. C.P. 37-42. The seated jury was made up of 2 black males, 3 white males, 2 black females, and 5 white females. T. 55, C.P. 37-42. The alternate juror was a black female. T. 55. As such, the demographic makeup of the seated jury mirrored the jury pool.¹ That the State exercised the majority of its peremptory strikes against African Americans and females is simply the result of the demographic makeup of the venire pool. The key inquiry in a *Batson* analysis is not the number of strikes used against a cognizable group or even the ultimate racial, gender, or ethnic makeup of the jury. Instead, the *Batson* doctrine "is concerned exclusively with discriminatory intent on the part of the lawyer against whose use of his peremptory strikes the objection is interposed." *Ryals v. State*, 794 So.2d 161, 164-65 (¶10) (Miss. 2001) (citing *Powers v. Ohio*, 499 U.S. 400, 406, 411, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991)).

Further, although the State exercised its peremptory strikes against 2 black males, 5 black females, and 1 white female, the State originally tendered unto the defense a panel consisting of 1

¹African Americans made up 39% of the venire pools while females made up 58.9% of the venire pool. The seated jury, counting the alternate, was 38% African American and 61% female.

black male, 3 white males, 2 black females, and 6 white females, which again nearly mirrored the racial and gender composition of the venire pool.² Defense counsel then used peremptory challenges to strike 7 of the original 12 tendered by the State, thereby striking 6 females. In fact, defense counsel exercised 8 of its 11 peremptory challenges against females. The bottom line is that there is nothing in the record to support an assertion that the State impermissibly used its peremptory challenges in a discriminatory manner. Accordingly, the plain error doctrine cannot save Daniels' procedurally barred claim.

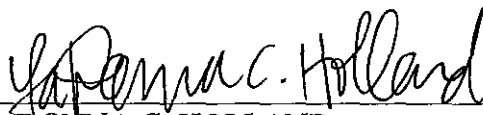
CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Daniels' conviction and sentence.

Respectfully submitted,

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²The original panel tendered by the State was 25% African American and 66% female.

CERTIFICATE OF SERVICE

I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 15th day of September, 2009.



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