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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

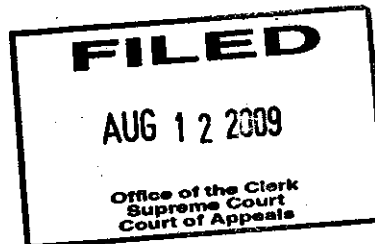
**TREVARUS CIJUAN DANIELS**

**APPELLANT**

**V.**

**NO. 2009-KA-0692-COA**

**STATE OF MISSISSIPPI**



**APPELLEE**

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**BRIEF OF THE APPELLANT**

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MISSISSIPPI OFFICE OF INDIGENT APPEALS  
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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

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**CERTIFICATE 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 disqualifications or recusal.

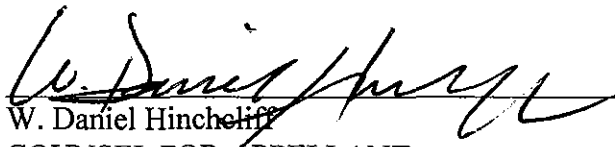
1. State of Mississippi
2. Trevarus Cijuan Daniels, Appellant
3. Honorable Doug Evans, District Attorney
4. Honorable Clarence E. Morgan, III, Circuit Court Judge

This the 12<sup>th</sup> day of August, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
W. Daniel Hincheliff  
COUNSEL FOR APPELLANT

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**STATEMENT OF THE ISSUES**

**ISSUE NO.1: WHETHER DANIELS RIGHT TO EQUAL PROTECTION WAS VIOLATED WHERE THE STATE EXERCISED SIX OF EIGHT PEREMPTORY CHALLENGES AGAINST FEMALES AND SEVEN OF EIGHT PEREMPTORY CHALLENGES AGAINST AFRICAN-AMERICANS WHEN SELECTING A JURY.**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Montgomery County, Mississippi, and a judgement of conviction for the crime of armed robbery against Trevarus Cijuan Daniels and a resulting sentence of twenty five years, with five suspended, following a jury trial commencing April 15, 2009, Honorable C. E. Morgan, III, Circuit Judge, presiding. Trevarus Cijuan Daniels is presently incarcerated with the Mississippi Department of Corrections..

**FACTS**

Following voir dire, a jury was selected without objection, during which the State exercised

eight peremptory challenges<sup>1</sup> on six female jurors, and seven African-Americans.

After opening statements, the State began its proofs. Chester Smith, the owner of Campbell Hill Grocery, testified that on July 28, 2008, at approximately 9:00 p.m. four people wearing “sock boggins” on their heads attempted to rob his store.(T. 63-64) As one of the robbers pushed a gun in his face, he pushed it aside and “hollered” to his wife to “[b]ring the shotgun.” (T. 64) The four ran. Smith was unable to identify them.

Cross examination clarified ownership of the store and that the robbers demanded money. (T. 66-67) Redirect further resolved that the money in the till belonged to Smith.

Luretta Lewis Burrell, [“Burrell”], knew Trevarus Cijuan Daniels, [“Daniels”], and also lived near the Campbell Hill Grocery. She told the jury that on the night of the robbery, after 9:00 p.m., Daniels came to her door with two other persons: “Chub” and “Man Man.” They asked for a ride to an apartment “[j]ust down the street.” (T. 70-73)

Burrell was not related to Daniels, but knew him through her son. Daniels and his companions did not mention any car trouble and did not appear upset. (T. 74-76)

Daniels’ mother was the next witness against him. On the morning of July 29, 2008, at home in the kitchen, Daniels admitted to her that he had “done something stupid.” He confided “[t]hat he had tried to rob the Campbell hill Store.” (T. 77-78)

During cross examination, Daniels’ mother agreed that he might have been referring to having recently broken up with his girlfriend. She did not notify the police. After Daniels was brought in for questioning, she advised him to tell the police what happened.

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The State announced before the jury was sworn, that it would not be seeking the death penalty. (T. 61)

Outside the presence of the jury a motion to suppress the Daniels' forthcoming confession was heard by the court. It was Daniels' argument that the confession was coerced by the chief of police who told him what to say and that if he did not, he (Daniels) would do all the time, that it would all be put on him. After the chief scared him, Daniels then confessed to officer Michael Spellman.. (T. 107-109) Police Chief Johnny Hargrove testified that he "*Mirandized*" Daniels, told him that his mother had told the police that he had admitted the crime to her, but made no threats nor promises. (T. 87) The chief denied providing any details of the crime to Daniels. (T. 92-93) The trial judge did not find Daniels to be credible and found the confession to be voluntary. (T. 123)

Officer Spellman questioned Daniels. Daniels statement was introduced into evidence and played for the jury. Thereupon the State rested.

Defendant's motion for a directed verdict, premised on the proofs being at variance to the indictment; that the indictment charged that the money was owned by Campbell Hill Grocery, while Smith testified he owned the grocery and the money. (T. 136-138)

After a brief *Culverson* advisory, Daniels took the stand. He denied committing the robbery, claiming his confession was induced by fear. He claimed the Chief gave him the details of the crime during a fifteen minute interview, and that he had not read his *Miranda* warning, just signed it. (T.142-156)

The defense rested. Chief Hargrove was called in rebuttal, and said he only spoke briefly with Daniels and did not threaten him, nor tell him how to confess. (T. 157) The State finally rested. The jury returned a verdict of guilty.

At the sentencing hearing, held on April 20, 2009, the trial court noted a history of trouble in sentencing Daniels to a term of twenty-five years, with five years suspended after serving twenty.

## SUMMARY OF THE ARGUMENT

The state exercised its peremptory challenges to the jury on six females, and seven of eight challenges to exclude African-Americans. Although no objection was interposed, such a pattern of discrimination affects fundamental rights and requires reversal where the trial court did not, *sua sponte*, require the state to provide race and gender neutral reasons for such an obvious pattern of discrimination.

## ARGUMENT

**ISSUE NO.1: WHETHER DANIELS RIGHT TO EQUAL PROTECTION WAS VIOLATED WHERE THE STATE EXERCISED SIX OF EIGHT PEREMPTORY CHALLENGES AGAINST FEMALES AND SEVEN OF EIGHT PEREMPTORY CHALLENGES AGAINST AFRICAN-AMERICANS WHEN SELECTING A JURY.**

An examination of the jury panel list ( C. P. 37) from which Daniels' jury was selected demonstrates that a distinct pattern of both gender and racial discrimination was utilized by the State in selecting the jury for this trial. Although no objection was interposed by the defense, such a clear pattern of discrimination affects fundamental rights and requires the trial court to *sua sponte* require an inquiry into the state's reasons for its challenges to prevent a "miscarriage of justice." *Gray v. State*, 549 So. 2d 1316, 1321 (Miss. 1989) When the trial court did not address the issue, the reviewing court may consider such a miscarriage of justice as "plain error." *Dixon v. State*, 953 So. 2d 1108 (Miss. 2007)

It is axiomatic that systematic discrimination based on race denies a defendant a fundamentally fair trial.

The Court went on to observe, however, that a State may not exercise its challenges in contravention of the Equal Protection Clause. It was impermissible for a prosecutor to use his challenges to exclude blacks from the jury "for reasons wholly unrelated to the outcome of the

7 pages  
Obj had to be interposed



particular case on trial” or to deny to blacks “the same right and opportunity to participate in the administration of justice enjoyed by the white population.”

*Batson v. Kentucky*, 476 U.S. 79, 91, 106 S.Ct. 1712, 1720 (U.S.,1986) This principle was expressed in *Swain v. Alabama*, 380 U.S. 202, \*5 S. Ct. 824 (1965) which held that “deliberate denial” of the right of African-Americans to sit on a jury was a violation of the Equal Protection Clause.

Similarly, deliberate exclusion of female jurors by the State through the exercise of peremptory challenges violates equal protection under the Constitution.

We granted certiorari (citation omitted), to resolve a question that has created a conflict of authority-whether the Equal Protection Clause forbids peremptory challenges on the basis of gender as well as on the basis of race. Today we reaffirm what, by now, should be axiomatic: Intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause, particularly where, as here, the discrimination serves to ratify and perpetuate invidious, archaic, and overbroad stereotypes about the relative abilities of men and women.

*J.E.B. v. Alabama ex rel. T.B.* , 511 U.S. 127, 130-131, 114 S.Ct. 1419, 1422 (U.S.,1994)

Again, these issues were not raised in the lower court. But as amply evinced by *McGee v. State*, 953 So. 2d 211, ( Miss. 2007) discrimination apparent in the record does not need an objection be made in the lower court. When a *Batson* , *Id.* issue is present by a record revealing a discriminatory intent, the reviewing court is compelled to protect fundamental rights and to reverse such a conviction for a new trial.

Because McGee's right to equal protection was violated, the entire judicial process was infected, and we must reverse the judgment of conviction and remand for a new trial.

*McGee* , *Id.* at 216

**CONCLUSION**

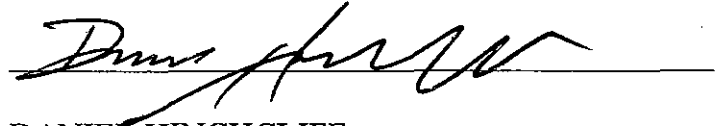
Because Daniels was denied a fundamentally fair trial and the protection of the Equal Protection Clause this cause should be reversed and remanded for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

For Trevarus Daniels, Appellant

BY:

A handwritten signature in black ink, appearing to read 'Dan Hinchcliff', is written over a horizontal line.

DANIEL HINCHCLIFF

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## CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Trevarus Cijuan Daniels, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Clarence E. Morgan, III  
Circuit Court Judge  
P.O. Box 133  
Kosciusko, MS 39090

Honorable Doug Evans  
District Attorney, District 5  
Post Office Box 1262  
Grenada, MS 38902

Honorable Jim Hood  
Attorney General  
Post Office Box 220  
Jackson, MS 39205-0220

This the 12<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
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