STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

THE STATE, ...RESPONDENT

v.

RICHARD LANARD SPRINKLE,.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether Appellant's claim that the trial court erred in failing to suppress the victim's in-court identification testimony is preserved for appellate review where Appellant failed to object to the identification when it was offered at trial, and even if preserved, whether the trial court properly concluded the out-of-court photo lineup identification did not result from unduly suggestive police procedures and was so reliable that no substantial likelihood of misidentification existed?

2. Whether the trial court properly imposed reasonable limits on Appellant's cross-examination of State's witness Sean Echols where the interrogation sought: (1) was irrelevant, (2) was likely to confuse the issues, and (3) would not demonstrate a prototypical form of bias on the part of Echols?

3. Whether the trial court properly denied Appellant's motions for a directed verdict and for a new trial on all charges where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each charge?

4. Whether the trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred the lesser, rather than the greater, offense was committed?

STATEMENT OF THE CASE

Richard Lanard Sprinkle (Appellant) was indicted at the October 8, 2012, term of the grand jury for Orangeburg County for two counts of armed robbery (R.p. 350-354) and two counts of attempted murder (R.p. 356-357). He was subsequently indicted at the February 4, 2013, term of the grand jury for burglary - first degree (R.p.359). Appellant was represented by Jillian D. Ullman, Esquire, and Mark Wise, Esquire, of the First Circuit Public Defender's Office. The State was represented by Assistant Solicitors Sarah A. Ford and B. Harrison Bell, Jr. (R.p.1). On April 8-10, 2013, Appellant proceeded to trial by jury before the Honorable Edgar W. Dickson pursuant to which he was found guilty of first degree burglary, two counts of armed robbery, and one count of assault and battery in the first degree as a lesser included offense of attempted murder. He was sentenced to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years' concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p. 346-360; R.p.330, lines 1-13). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

In the early morning hours of June 26, 2011, two men knocked on James Wright (Wright) and Robert Rumph's (Rumph's)[1] front door and asked if they could use the telephone. When Wright opened the door, the men produced a pistol and a knife and asked for money. The intruders struck Wright in the head with the pistol and cut Rumph with the knife while continuing to demand money. After assaulting Wright and Rumph, the men took cash and some clothing, and left in Rumph's car. (R.p.93, line 22-p.94, line 15; p.106, line 11-p.111, line 7; p.136, line 8-p.140, line 23; p.145, lines 15-19). Wright testified he knew Appellant before the incident and had even talked to Appellant the day before. (R.p.111, line 17-p.112, line 13). Rumph testified he knew Appellant's accomplice, Sean Echols, before the incident because Rumph socialized with Echols' mother, Vivian, and had previously loaned money to Echols. (R.p.139, lines 2-13). During the subsequent investigation, Wright and Rumph were able to identify Appellant and Echols from photo line-ups prepared by the police. (R.p.112, line 14-p.115, line 4; p.142, line 4-p.143, line 2).

Identification Evidence: Pretrial

On April 8, 2012, the court held a hearing to address several pre-trial motions. First, the State asked the trial court to conduct a Neil v. Biggers[2] hearing regarding the reliability of the out-of-court identification of Appellant and the admissibility of eyewitness identification testimony the State was considering offering at trial. First, the State called Wright to the stand. He described the two robbers as black men, one of

[1] Rumph was also known by the nickname "Rocky" and was alternatively referred to as Rocky, Mr. Rock or Uncle Rocky by some witnesses.

[2] 409 U.S. 188 (1972).

whom had long hair. Wright testified he knew the one with the long hair as "Ricky" because Ricky "used to [walk] the street all the time." He explained he had actually talked to Ricky on the Saturday evening before the early Sunday morning robbery. Next, Wright identified State's Exhibit #1 as a photo line-up which was presented to him by the police. He testified the person in photo number two was the one who came into his home and robbed him. Wright said he circled the photo and wrote his initials next to his selection. He testified the police officer who presented the line-up did not tell him which photo to pick, and he knew right away which one was Ricky. The exhibit was introduced into evidence for the purpose of the hearing. Wright then physically identified Appellant as the person he had circled in the line-up and testified that despite slight changes in physical appearance since the incident, Appellant was without a doubt the person who assaulted and robbed him. (R.p.5, line 21-p.14, line 11). On cross-examination Wright acknowledged that at the time he encountered the intruders there were no lights on in the house, he had just woken up, and he had drunk a half-pint of alcohol before going to bed; however, he noted when he answered the door he "looked right in the face" of Appellant and again identified him in the courtroom as the person who hit him with the pistol and robbed him. (R.p.14, line 18-p.28, line 15).

Next, the State called Investigator Lori Ann Lewis Garrison of the Orangeburg County Sheriff's Office to the stand. She talked to both Wright and Rumph the night of the incident. Garrison testified Wright told her he knew one of the suspects by the name "Ricky" or "Rick," and that Ricky lived on the 1400 block of Goff. She later discovered Appellant [Richard Sprinkle] lived at 1482 Goff, so she generated a photo line-up that included Appellant. The day after the incident Garrison showed the six-person photo

line-up to Wright and asked if he recognized anybody who assaulted him that night. Wright identified picture number two, which was the photo of Appellant. Garrison said Wright showed no hesitation in picking the picture of Appellant. She testified she did not suggest to Wright whom he should pick out. (R.p.28, line 22-p.31, line 13).

On cross-examination Garrison testified she showed Wright a total of three different photo line-ups, two of which included a photo of Echols, and one of which included a photo of Appellant. She explained that administrator at the Sheriff's Department created the line-up including Appellant by choosing photos of five other individuals with the same physical characteristics and hairstyle as the photo of Appellant. Garrison testified she simply asked Wright if he could identify anybody in the picture that he recognized from that night, but did not tell him there would be somebody particular in the line-up. (R.p.32, line 11-p.39, line 15). On re-direct Garrison clarified the Sheriff's Department came up with the photo line-up by finding pictures of five other individuals with similar characteristics, similar haircuts, similar facial features, and similar facial hair as Appellant. (R.p.39, line 22-p.40, line 18).

At the close of the testimony, Appellant argued the line-up constituted an unduly suggestive police procedure because he was the only person in a jail uniform. He claimed it was obvious the shirt he was wearing was a jail shirt and that some of the photos were cropped too closely to see the full face of the person pictured. Appellant also argued that pursuant to "the factors that Biggers requires" the identification made by Wright was not reliable because Wright did not have a good opportunity to witness the intruders on the night of the incident. (R.p.41, line 5-p.45, line 19).

The State responded that the identification procedure was not unduly suggestive in any way because it involved a photo line-up with six individuals of the same race with similar hair and facial feature. The solicitor argued it was not at all evident Appellant was wearing a jail uniform in the photo. Finally, the solicitor argued that even if the procedure was somehow suggestive, the fact Wright knew Appellant from prior dealings demonstrated there was no likelihood of irreparable misidentification. (R.p.45, line 21-p.47, line 11).

After hearing testimony arguments, the trial court denied the motion to exclude the eyewitness identification evidence. The judge ruled as follows:

> I think they did a spectacular job of putting this lineup together.
>
> To me, I don't find it unduly suggestive at all. Everyone has essentially the same skin tone, length of hair. And with the exception of one who might have a mustache, everybody has a goatee, a mustache and a goatee.
>
> So the lineup is not unduly suggestive at all. And I don't know [who] did this but I'd rather see more lineups [done] this well than some I've seen. So, I don't think the lineup in and of itself is unduly suggestive.
>
> I've listened to the testimony of the victim, Mr. Wright, and Ms. Garrison. I do not believe that the identification process was unduly suggestive, nor was there any substantial likelihood of misidentification because he had given a general description of the Defendant, indicated that he knew where he lived and then picked him out of this photo lineup.
>
> So I find it to be reliable.

(R.p.48, line 22-p.49, line 15).

Scope of Cross-Examination: Pretrial

Following a pre-trial Jackson v. Denno hearing, Appellant made a motion to require the State to disclose any deals made for the testimony of co-defendant Echols, either with the State or the federal government. He claimed Echols was charged federally

with crimes unrelated to the State charges. The solicitor responded: "Your Honor, everything has been provided to the defense concerning the pending investigation federally against Mr. Echols. The State has also provided an expired plea offer to Mr. Echols. There have been no offers or negotiations or anything of that nature concerning Mr. Echols' testimony in this case, Your Honor." (R.p.50, line15- p.51, line 20). The State then made a motion in limine to exclude any effort to question Echols about the pending federal investigation, noting there had been no conviction, or even a federal charge. The solicitor also noted Echols attorney was present and had instructed Echols not to answer any questions about the federal investigation based on his Fifth Amendment rights. (R.p.54, line 23-p.56, line 5). Appellant responded that the federal investigation involved the shooting of a corrections officer, and alleged that during the investigation Echols admitted he shot the officer in an assassination attempt in exchange for money. He argued the shooting was a "bad act," and that he should be allowed to cross-examine Echols about it so the jury could better evaluate his credibility. (R.p.56, line 8-p.57, line 1). The State replied that any question about the shooting would induce Echols to answer that he was invoking his Fifth Amendment rights, which would be extremely prejudicial to do in front of the jury. The trial judge took the matter under advisement. (R.p.57, lines 3-9).

The following morning the case was called for trial, the jury was selected, and the court gave preliminary instructions before excusing the jury panel and ruling on outstanding pretrial matters. (R.p.58, line 1-p.85, line 8). The trial court granted the State's motion to exclude any testimony regarding Echols' federal investigation for two reasons. First, the trial court found such evidence was inadmissible under the South

Carolina Rules of Evidence, specifically Rule 608(b), because it was not probative of Echols character for truthfulness or untruthfulness. Second, relying on State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997), the trial court found any attempt to elicit testimony about the pending investigation would impermissibly allow the jury to draw an adverse inference from Echols' invocation of his right against self-incrimination, which would run contrary to the purpose of the Fifth Amendment. (R.p.86, line 17-p.88, line 14). Ultimately, the jury was sworn and the case proceeded to trial. (R.p.90, lines 5-13).

Trial

During opening statements, Appellant's counsel reminded the jury that it was their job to determine whether any of Wright's trial testimony was true. (R.p.102, line 13-p.103, line 1). The State then called Wright to the stand to describe the armed robbery and assault. He repeated his previous in camera testimony that on the night of the incident two black men, one with long hair and one with short hair, knocked on his door. When Wright went to the door, they asked about Rumph and said they wanted to make a phone call. Rumph told Wright it was okay to let them in, but when Wright opened the door one of the men pointed a pistol at his chest and grabbed him around the neck. (R.p.105, line 22-p.108, line 21). Wright made an in-court identification of Appellant as the assailant with the pistol, without any objection from Appellant. Wright testified he knew Appellant as "Ricky" and recognized Appellant because Wright saw him "walking the street" all the time. (R.p.108, line 23-p.109, line 12).

Wright testified that one man went down the hall to Rumph's room while the other man forced Wright to his room, demanded money, and made Wright pull up his mattress. Wright was bleeding because he had been hit in the head with the pistol. The

man then walked Wright to Rumph's room, where the other man cut Rumph with a knife to get Rumph to open his closet and give up his "pocketbook." The two men then took Rumph's car and left. Wright testified he talked to Appellant at Bojangles the evening before the Sunday morning robbery, and then he made a second in-court identification of Appellant. Appellant again failed to object. (R.p.109, line 13-p.112, line 13). Next, Wright described the photo lineup procedure and his out-of-court identification of Appellant, and he made a third in-court identification of Appellant without objection. He also described a separate photo lineup where he identified Echols as the second robber. (R.p.112, line 14-p.115, line 14; R.p. 334-335). On cross-examination, Wright explained that the intruders had a gun and a knife, but he wasn't sure whether Appellant or the other man had the knife after they were all in Rumph's room, because Wright was bleeding and wiping blood from his face as a result of having been hit with the pistol. (R.p.121, lines 9-21). He later said Rumph had already been cut when they entered his room, and he did not actually see Rumph getting cut. (R.p.127, lines 1-23).

The State then called Rumph to the stand. On the night of the incident, Rumph was in bed asleep when Wright came to his room to say two men were at the door who wanted to use the phone. One of the men referred to Rumph as "uncle" and Rumph told Wright to let them in. Shortly thereafter, a man entered Rumph's room, pointed a gun at him, and demanded money. Rumph directed the intruder to some cash that was on his dresser, but the man demanded more money and said: "Don't make me kill you over this little bit of money." Wright and a second intruder with short hair then entered Rumph's bedroom. Rumph testified the man with longer hair, or "dreads" was the one who was already in his room. He claimed the man with the dreads then cut him with a knife.

Rumph explained that when the man with the dreads first entered the bedroom he had the pistol, but then he and the man with the shorter hair traded weapons, and the man with the dreads cut him with the knife while the man with shorter hair said: "Make him talk." (R.p.135, line 25-p.139, line 2).

Rumph identified the intruder with short hair as "Vivian's son" and testified he already knew him because Rumph and his mother were "socializing together." Rumph testified the man with the dreads started cutting him on his stomach, leg, arm and foot. As the intruders left the house with Rumph's money, pants, and a hat, the man with short hair told Rumph: "don't you never disrespect my mama because I will be back." The two men then left in Rumph's car. (R.p.139, line 2-p.140, line 23). Rumph identified State's Exhibit Numbers Four, Five, Six, Seven, and Eights as photographs of his injuries. He also identified State's Exhibit Number Three as a photo line-up by which he made an out-of-court identification of Echols as the man with short hair. Rumph explained there were two intruders, one with short hair whom he knew, and one with dreadlocks whom he didn't know, but that they both participated in stealing his pants, his car, his money, and his hat. (R.p.141, line 6-p.143, line 19; State's Exhibit #3).

Next, Deputy David McRoy of the Orangeburg County Sheriff's Department testified on behalf of the State. McRoy was working road patrol on June 26, 2011. At approximately two o'clock in the morning he responded to the scene of the robbery. He described one victim as having cuts on his chest, left foot, and forearm, and the other victim having a big gash on top of his head. (R.p.159, line 10-p.161, line 13).

The State then called Investigator Garrison to describe her investigation of the assault and robbery of Wright and Rumph. She described the injuries received by both

victims and identified several photos of those injuries, each of which was introduced into evidence without objection. (R.p.167, line 1-p.174, line 5; p.186, lines 8-12; R.p.337-345). Garrison testified she talked to both victims about the incident. Wright stated he knew one of the subjects from a local place called the Corner Pocket and that his name was "Rick" or "Ricky," and Rumph stated the other subject was Sean Echols, the son of a lady he was seeing. Garrison went on to describe the preparation of the photo line-ups and the out-of-court identifications Wright made of both Appellant and Echols (R.p. 334-335), and the out-of-court identification Rumph made of Echols (R.p.336). Each of the three photo line-ups was introduced into evidence with "no objection" from Appellant. (R.p.174, line 7-p.180, line 23).

Next, Investigators Johnny Thrower and John Stokes testified in regard to an oral statement Appellant made to them after his arrest. Appellant made several requests to talk to Thrower, so Thrower and Stokes eventually agreed to meet with Appellant. At the meeting, Appellant told the investigators about a home invasion he participated in with Echols. Appellant claimed he went to the residence with Echols and Echols' mother, but after they got inside, Echols started assaulting a guy, at which point Appellant got scared and ran out of the house. (R.p.186, line 24-p.202, line 9).

Finally, the State called co-defendant Sean Echols to the stand. Echols testified he originally was to planning to commit a quick robbery by himself, but then sought help from his friends Collins Shuler and Jasper Clark, who also brought Appellant into the picture. He said he and Appellant specifically planned the robbery of Wright and Rumpy because the victims ran a gambling house and would have money. Echols said he and Appellant talked about how they would commit the robbery, how they would get away,

and the specific roles each would play in committing the crime. Echols already knew Rumph because Rumph was "affiliated" with his mother. He repeated his claim that he and Appellant planned the robbery. (R.p.203, line 17-p.206, line 25).

Echols then described the entire incident in great detail. Shuler and Clark dropped Appellant and Echols a few streets away from the victims' house. Appellant and Echols walked through a field and then approached the door of the residence. Echols knocked and when Wright came to the door Echols told Wright he needed to use the phone because he had been in a fight with his wife and needed to call his mother to pick him up. Echols testified this claim was a lie in order to gain entry into the house. Wright walked away but returned with a cordless phone and told Echols and Appellant to "come in." (R.p.207, line 1-p.209, line 3).

According to Echols, when they entered the house Appellant had a gun and Echols had a knife. Appellant pointed the gun to Wright's head and told him not to move and then walked to Rumph's room while Echols escorted Wright to Wright's room. Echols asked Wright for money, took a few bills from his wallet, and flipped up Wright's mattress to look for more money when he heard Appellant call for him to come to Rumph's room. When Echols and Wright got to Rumph's room, Appellant handed Echols two handfuls of cash and asked Echols for the knife. They traded weapons and Appellant began to cut Rumph with the knife while demanding more money. Eventually, Rumph admitted there was more money in the closet. Appellant opened the closet and retrieved the money while Echols asked for Rumph's car keys. Echols took a pair of pants and a hat from Rumph's room and used the pants to open the back door without leaving fingerprints. Appellant and Echols then drove Rumph's car to the end of the

street, got out, and called Clark to come pick them up. Echols testified he and Appellant beat, stabbed, and robbed Wright and Rumph, and that they planned the robbery. (R.p.209, line 3-p.212, line 8).

Next, Echols testified he had not been offered or promised anything in exchange for his testimony. He said he was testifying because he did it, got caught, and was hoping the court would have mercy on him. (R.p.212, line 14-p.213, line 4). Echols then testified Appellant had dreads the night of the robbery and reviewed State's Exhibit #1. He said photo number 2 was an accurate picture of what Appellant looked like at the time of the robbery. Echols admitted he hit Wright in the head twice with the gun and punched him in the mouth, causing Wright to bleed. (R.p.212, line 13-p.214, line 7).

Scope of Cross-examination: Trial

Before Appellant began his cross-examination, the solicitor advised the court he had a matter to take up outside of the presence of the jury. The jury was excused, and the State renewed its motion to prohibit any questions about the federal investigation involving Echols. The trial court then asked Appellant to proffer the questions he wanted to ask on cross-examination and asked the State to make whatever objections it would make to those questions. The proffer proceeded as follows:

> Q: Mr. Echols, just to get right to the heart of what we're talking about here. Have you been charged in a federal case involving the shooting of a corrections officer?
>
> The Court: Okay.
>
> Ms. Ford: Objection, Your Honor, based on our previous motions.
>
> Mr. Wise: If I may, Your Honor, at this point he hasn't asserted his Fifth Amendment rights.
>
> The Court: No, I - -

Mr. Wise: And I think the case law is pretty clear that somebody else can't do it for him.

The Court: I will let him do whatever - - answer however he wishes to answer.

The Witness: I would like to assert my Fifth Amendment.

The Court: Okay.

Mr. Wise: Okay.

Ms. Ford: Objection.

The Court: And now she's objecting and renewing the motion that we made in limine. And I'm going to continue with my ruling that we made in limine, I'm renewing it.

(R.p.214, line 17-p.215, line 13). Counsel for Appellant argued he should be allowed to ask Echols whether he is "under investigation" because the answer given wouldn't be incriminatory in any manner. The State responded that any question about an investigation or a possible criminal charge would allow Echols to invoke his Fifth Amendment rights because he is under no compulsion to incriminate himself. Ultimately, the trial court ruled: "Well, it may not be - - and I understand the distinction that you're attempting to make but he has invoked his Fifth Amendment rights. And I'm going to go along with the ruling I made earlier. You're not going to be able to question him on that." (R.p.216, line 16-p.217, line 16).

Next, the State made a motion to prohibit Appellant from cross-examining Echols in regard to his prior convictions for assault and battery with intent to kill and second-degree burglary. The solicitor argued that under Rule 609(a)(1), SCRE, any probative value was outweighed by undue prejudice. The trial court disagreed and ruled it would allow Appellant to ask Echols about the prior convictions. (R.p.218, line 2-p.219, line

21). The jury returned to the courtroom and Appellant began his cross-examination of Echols. Echols testified Appellant did not do anything to Wright and repeated his claim that he was the one who hit Wright with the pistol. (R.p.220, line 5-p.224, line 10). Echols then acknowledged that in a statement given to the police during the investigation he said there were three people involved in the robbery but that the other "dude" or "third person" involved: (1) was just standing there, (2) did not engage in any planning of the robbery, (3) did not have a weapon, (4) did not get any of the money stolen, (5) was innocent, (6) was merely present, and (7) didn't know what was happening until it happened. Echols, however, testified this claim about an innocent third party was a lie and that once he learned Appellant was trying to place all of the blame on him, he came forward to give the truth. (R.p.226, line 3-p.231, line 22).

Appellant then began questioning Echols about the charges he was facing for his participation in the robbery. He admitted he had not been indicted for first-degree burglary but denied knowing Appellant had been so indicted, for what Echols acknowledged was a "very serious crime." The State objected to the questions about first-degree burglary on grounds they were not relevant. The trial court initially sustained the objection and then sent the jury out to hear arguments after Appellant drew the judge's attention to State v. Mizzell.[3] After hearing Appellant's argument in regard to Mizzell, and a brief discussion in chambers, the trial court asked counsel for Appellant to describe any additional areas of cross-examination he wished to explore and to explain why he believed they were appropriate. Appellant's counsel advised he wanted to cross-examine Echols on three points, all of which would assist the jury in making a determination about Echols credibility. First, he wanted to ask Echols if he had sought a

[3] 349 S.C. 326, 563 S.E.2d 315 (2002).

ten year sentence during plea negotiations with the State. Second, he wanted to ask Echols if he was in fact given an offer of a cap of twenty years during plea negotiations with the State. Third, he wanted to ask Echols if he is a member of the Folk Nation gang. The solicitor responded that she believed Appellant's first and second requests were inadmissible pursuant to Rule 410, SCRE, because they were part of Echols' plea negotiations, and the third request was inadmissible pursuant to Rules 404 and 405, SCRE, because it was evidence of other crimes, wrongs, or acts. (R.p.231, line 23-p.240, line 14).

The trial court ruled as follows:

> The first thing, right before we took a break I had sustained your objection to his question about whether or not he could ask him about the possible life sentence. And Mr. Wise was kind enough to give me the Mizzell case so I'm going to correct my ruling.
>
> I'm going to overturn the objection. He is allowed to ask him about the maximum sentence he could be facing under that. Okay?
>
> With regards to Mr. Echols asking, you know, for ten years or asking for a cap of 20 years, whether or not that was given or not, all of that is part of plea negotiations and we're not going to get into that at all.
>
> With regard to whether or not he was in a gang or not in a gang however, whether he - - it doesn't matter to me how he's going to ask it, we're not going to get into that. I think it's character. Doesn't have anything to do with his truthfulness or untruthfulness. So whether I think it's a bad act that he's in a gang or not, we're not getting into it in this trial.
>
> Okay? All right.

(R.p.240, line 15-p.241, line 9). Cross-examination resumed, and Appellant questioned Echols about not having been indicted for first-degree burglary. He acknowledged first-degree burglary would have carried a sentence of life without the possibility of parole. Appellant also questioned Echols about his prior convictions for burglary and assault and

battery with intent to kill. (R.p.243, line 11-p.244, line 20). Upon completion of Echols testimony, the State rested. (R.p.248, lines 20-23).

Proposed Jury Charges

After questioning Appellant outside of the presence of the jury in regard to his right to testify, the parties discussed possible jury charges. In regard to the crimes themselves, the trial judge advised he would be charging armed robbery, attempted murder and the lesser included offense of assault and battery in the first degree as to both victims, Wright and Rumph. He said he would also charge the lesser included offenses of assault and battery in the second degree and assault and battery of a high and aggravated as to Wright, but declined Appellant's request to charge assault and battery in the second degree as to Rumph. The trial judge found Mr. Rumph could not have suffered only moderate bodily harm when he was cut five times, denied Appellant's request, and noted Appellant's objection. (R.p.249, line 15-p.251, line 1).

Motion for a Directed Verdict

Appellant moved for a directed verdict on all charges. In regard to attempted murder, he argued the State had failed to present any evidence of an intent to kill. He argued that since Wright had only been struck with a pistol rather than shot or stabbed, there was no evidence of intent to kill. He further argued that since Rumph was only cut with the intention of trying to make him talk, the robbers could not have wanted him dead, so there was no intent to kill. In regard to armed robbery, Appellant argued there was no evidence he took property from the victims or had to the intent to deprive them of their property, particularly where the car was left right down the street. Finally, in regard to burglary, Appellant argued that since there was no forced entry there was no intent to

commit a crime at the time the intruders entered the victims' house. (R.p.252, line 18-p.255, line 10). The solicitor responded that by being armed with deadly weapons and threatening to kill the victims if they didn't talk, the intruders evidenced an intent to kill. The solicitor then referenced the use of weapons and the taking money and goods from both vicitms as evidence of armed robbery, and use of trick or artifice to gain entry and the injuries inflicted on the victims as evidence of burglary. (R.p.255, line 14-p.257, line 6). The trial court denied the motion for a directed verdict as to each charge. (R.p.257, line 7-p.258, line 3). Appellant chose not to testify in his own defense, and the defense rested. Appellant renewed his motion for a directed verdict and the trial court again denied the motion. (R.p.258, line 7-p.260, line 10).

Closing Arguments, Jury Charge, and Verdict

After the trial court denied Appellant's motion for a directed verdict, the parties made closing arguments. Appellant's counsel reminded the jury of the weaknesses of Wright's identification by pointing out the inconsistency between the initial police report of two "unknown" assailants and Wright's subsequent claim that he knew Appellant prior to the incident. Counsel also noted the discrepancy between Wright's original description of Appellant as having dark skin and the appearance of Appellant's skin during trial. Next, counsel attacked the reliability of Wright's identification where he was presented with multiple photo line-ups and he noted the seemingly inconsistent testimony from Wright, Rumph, and Echols about Appellant's participation in the crimes. (R.p.271, line 21-p.293, line 7).

The trial judge charged the jury on the State's burden of proof, the presumption of innocence, the roles of the judge and jury, direct evidence, circumstantial evidence,

credibility of witnesses, criminal intent, accomplice liability, and mere presence. (R.p.294, line 6-p.307, line 15). In regard to identity, the trial judge specifically charged the jury as follows:

> An issue in this case is the identification of the Defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant.
>
> Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was available, how far or close the witness was, the lighting conditions and whether the witness had the chance to see or know the person in the past.
>
> Once again, I instruct you, the burden of proof is on the - - the burden of proof is on the State extends to every element of the crime charged. And is - - and this specifically includes the burden of proving beyond a reasonable doubt the identity of the Defendant as a person who committed the crime.
>
> If after examining the testimony you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

(R.p.302, line 10-p.303, line 10). In regard to the charging the crimes and the elements of those crimes, the trial court charged armed robbery, attempted murder, assault and battery of a high and aggravated nature, and assault and battery in the first degree as to both victims, but only charged assault and battery in the second degree as to Wright. (R.p.307, line 16-p.313, line 17). The trial court then gave detailed instructions on the verdict form, including the attempted murder charges and the possible lesser included offenses as to each victim, which did not include an option for assault and battery in the second degree as to Wright. (R.p.314, line 11-p.316, line 18). Except for an objection to the trial

judge's charge that specific intent was not required for attempted murder, Appellant made no other objections to the jury charge or verdict form. (R.p.317, line 2-p.319, line 19).

At the end of trial, the jury found Appellant guilty of first degree burglary, two counts of armed robbery, and one count of first degree assault and battery as a lesser included offense of attempted murder in regard to Rumph. Appellant was acquitted of any assault in regard to Wright. Appellant made a motion for a new trial, arguing there was no evidence of great bodily injury to Rumph which would support the conviction for assault and battery in the first degree. The trial court denied the motion and sentenced Appellant to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years' concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.346-360; R.p.330, lines 1-13). (R.p.321, line 9-p.326, line 24).

ARGUMENT

I.

Appellant's claim that the trial court erred in failing to suppress the victim's in-court identification testimony is not preserved for appellate review because Appellant failed to object to the identification when it was offered at trial, and even if preserved, the trial court properly concluded the out-of-court photo lineup identification did not result from unduly suggestive police procedures and was so reliable that no substantial likelihood of misidentification existed.

Appellant argues the trial court erred in denying his motion to suppress Wright's in-court identification testimony because that testimony was unreliable and was based on an unduly suggestive out-of-court photo line-up. This argument is not preserved for appellate review because Appellant failed to object to the identification evidence when it was offered at trial. Even if preserved, there was ample evidence supporting the circuit court's findings that: (1) the out-of-court photo lineup identification did not result from unduly suggestive police procedures; and (2) under the totality of the circumstances the out-of-court identification was so reliable that no substantial likelihood of misidentification existed. Furthermore, any error in the admission of Wright's identification testimony was harmless given the cumulative nature of that evidence and the other overwhelming evidence of Appellant's guilt. For all of these reasons, Appellant's challenge to the identification testimony should be denied and his convictions should be affirmed.

Issue Preservation

Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith,

337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993); State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012); State v. Burton, 326 S.C. 605, 609, 486 S.E.2d 762, 764 (Ct. App. 1997). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001). Additionally, if the trial court clearly indicates its ruling is final rather than preliminary, the issue is preserved for appellate review. State v. Wiles, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009); Atieh, 397 S.C. at 647, 725 S.E.2d at 733.

In the instant case, Appellant failed to preserve any challenge to the identification evidence for appellate review. Before the jury was sworn, the trial court held a Neil v. Biggers hearing regarding the reliability of Wright's out-of-court identification of Appellant and the admissibility of the eyewitness identification testimony the State was considering offering at trial. The trial judge issued a preliminary ruling finding the identification process was not unduly suggestive and that the identification itself was reliable. Following a pretrial Jackson v. Denno hearing, a preliminary jury charge, and opening statements, the State called Wright to the stand to tell the jury about the assault, robbery and burglary. During Wright's testimony, the State sought to elicit the identification evidence addressed in the trial court's pretrial ruling. Wright proceeded to

make three separate in-court identifications of Appellant. Appellant did not object or otherwise attempt to renew any pretrial challenge to Wright's identification testimony. Appellant also did not object to testimony from Wright and Investigator Garrison describing the out-of-court identification procedure, and he failed to object with the photo lineup was introduced into evidence by the State.

Because Appellant did not make a contemporaneous objection to any identification evidence elicited during trial in the jury's presence, he failed to preserve any issue related to the trial court's pretrial rulings on the identifications by Wright. See State v. Turner, 373 S.C. 121, 126, n.1, 644 S.E.2d 693, 696 (2007) (finding the issue regarding an in-court identification was not preserved when the appellant objected pre-trial to a suggestive identification procedure and again during trial to the procedure but never objected to the subsequent in-court identification). Therefore, this issue is not preserved for further review. To the extent this Court finds the identification issue was properly preserved, the State submits it is nevertheless without merit.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission of evidence is within the sound discretion of the circuit court. State v. Simmons, 384 S.C. 145, 166, 682 S.E.2d 19, 30 (Ct. App .2009). Accordingly, a circuit court's decision to allow the in-court identification of an accused will not be disturbed on appeal absent an abuse of discretion or prejudicial legal error. Id.; State v. Govan, 373 S.C. 552, 556, 643 S.E.2d 92, 94 (Ct.

App. 2007). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

Discussion / Analysis

An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012); State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). A witness's subsequent in-court identification is inadmissible "if a suggestive out-of-court identification procedure created a very substantial likelihood of *irreparable* misidentification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added). Trial courts employ a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. Liverman, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from "unnecessarily suggestive" police procedures. Biggers, 409 U.S. at 198-99; Liverman, 398 S.C. at 138, 727 S.E.2d at 426; Traylor, 360 S.C. at 81, 600 S.E.2d at 526. If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong. State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). The defendant bears the burden of proving the

identification procedure was impermissible suggestive. Id. at 561, 745 S.E.2d at 141 ("Our supreme court has never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions regarding federal constitutional law are binding on us, has held the defendant bears the burden of proving the identification procedure was impermissibly suggestive.").

If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless "so reliable that no substantial likelihood of misidentification existed." Liverman, 398 S.C. at 138, 727 S.E.2d at 426. The inquiry must focus upon whether, under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007); Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36. When determining the likelihood of misidentification, courts must evaluate the totality of the circumstances using the following factors: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Turner, 373 S.C. at 127, 644 S.E.2d at 697; Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36.

In the instant case, Wright testified the police officer who presented the photo lineup did not tell him which photo to pick. Investigator Garrison confirmed this account, testifying she did not suggest to Wright whom he should pick out of the photo array, instead simply asking if he recognized anybody who assaulted him that night.

Appellant argued the lineup was nevertheless unduly suggestive because he was the only person in a jail uniform. He claimed it was obvious the shirt he was wearing was a jail shirt. The trial judge disagreed and found the photo lineup was not unduly suggestive at all. The trial judge observed how strikingly similar the six individuals appeared the photographs, all having the same skin tone and length of hair, and nearly identical facial hair. He praised the "spectacular job" the police did putting the photo array together. (R.p.49, line 22-p.49, line 15). The photo lineup itself supports the trial court's observations. It also demonstrates the fallacy of Appellant's claim regarding the shirt he was wearing in the photograph. It is simply a solid colored, "v-neck" shirt with no lettering or other identifying information indicating it is part of a jail uniform. (R.p. 334). Appellant failed to carry his burden of proving the identification procedure was impermissibly suggestive.

On appeal, Appellant also argues Wright's prior personal knowledge of Appellant led the police to create a suggestive lineup. He contends: "The creation of a lineup that contained a photo of a suspect who matched the name given to the police but not the description was unduly suggestive and created a very substantial likelihood of irreparable misidentification." (Brief of Appellant, p.5-p.6). However, this Court has specifically found the opposite to be true. See Singleton, 395 S.C. at 14, 716 S.E.2d at 336 (concluding the identification process was not unduly suggestive because the victim had prior personal knowledge of the defendant). Thus, this argument is without merit.

The State submits that since there was evidence to support the trial court's decision, that court did not abuse its discretion in ruling the procedure was not impermissibly suggestive. Dukes, 404 S.C. at 563, 745 S.E.2d at 142. Consequently,

this Court should affirm the trial court's ruling and need not consider the trial court's determination of the second prong of Biggers. Id. To the extent this Court disagrees, the State submits there was also sufficient evidence to support the trial court's ruling that the out-of-court identification was reliable under the totality of the circumstances.

At the pretrial hearing, Wright described the two robbers as black men, one of whom had long hair. This description was consistent with the photograph of Appellant the police used in the photo lineup. Wright testified he knew the robber with the long hair as "Ricky" and explained he had actually talked to Ricky on the Saturday evening before the early Sunday morning robbery. He testified that when presented with the lineup, he knew right away which one was Ricky. (R.p.5, line 21-p.14, line 11). On cross-examination Wright noted that when he first answered the door he "looked right in the face" of Appellant. (R.p.14, line 18-p.28, line 15). Investigator Garrison testified she showed the lineup to Wright the day after the incident and Wright showed no hesitation in picking the picture of Appellant. (R.p.28, line 22-p.31, line 13).

Appellant argued the identification made by Wright was not reliable because Wright did not have a good opportunity to witness the intruders on the night of the incident. (R.p.41, line 5-p.45, line 19). The trial judge disagreed and ruled as follows:

> I've listened to the testimony of the victim, Mr. Wright, and Ms. Garrison. I do not believe that the identification process was unduly suggestive, nor was there any substantial likelihood of misidentification because he had given a general description of the Defendant, indicated that he knew where he lived and then picked him out of this photo lineup. So I find it to be reliable.

(R.p.48, line 22-p.49, line 15).

The evidence supports this finding. Wright had an excellent opportunity to view the perpetrator at the time of the crime because he looked right in Appellant's face before

opening the door. His attention was heightened because he was answering a strange knock on the door in the middle of the night. Wright gave a relatively accurate description of the perpetrator and was then certain he had made a correct identification from the photo lineup. Finally, the lineup was presented only one day after the crime. Further, a review of Wright's trial testimony indicates that his in-court identification of Appellant originated not from any taint associated with the allegedly suggestive photo lineup, but from Wright's prior association with Appellant and his observation of Appellant at the time robbery. Thus, the in-court identification was nonetheless properly admitted as it had an independent origin. Liverman, 398 S.C. at 142, 727 S.E.2d at 428. Under the totality of the circumstances, the victim's pre-trial and in-court identifications were reliable. Therefore, the trial court did not abuse its discretion in denying Appellant's motion to suppress the identification testimony, and Appellant's convictions should be affirmed.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). An admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v.

Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Here, the State submits any error in the admission of the identification evidence from Wright was harmless, merely cumulative to other evidence, and not prejudicial. The identification by Wright placed Appellant at the scene of the crime and showed he was an active participant, evidence which was cumulative to and corroborated by the detailed testimony from Echols. See State v. Simmons, 308 S.C. 80, 83, 417 S.E.2d 92, 94 (1992) ("We note that, under certain circumstances, if the identification is corroborated by either circumstantial or direct evidence, then the harmless error rule might be applicable."). Furthermore, Appellant admitted in his own statement to law enforcement he was present at the scene of the crime and he conceded his presence in his closing argument to the jury. (R.p.286, line 18-p.287, line 6). See State v. Kirkpatrick, 320 S.C. 38, 43, 462 S.E.2d 884, 888 (Ct. App. 1995) ("The erroneous admission of the key evidence was harmless inasmuch as Kirkpatrick admitted he rented the U-Haul in question and bought a lock, with two keys, to put on it. Thus, the evidence of the key linking Kirkpatrick to the U-Haul was merely cumulative."). Because the challenged identification evidence was cumulative to other properly-admitted evidence, any error in the admission of that identification evidence was completely harmless and could not have affected the result at trial. See Singleton, 395 S.C. at 14-15, 716 S.E.2d at 336 (finding harmless error in the admission of identification testimony where two co-conspirators testified against Singleton and identified him as a participant in the robbery).

Furthermore, the propriety of Appellant's conviction is reinforced by the other protections he was afforded at trial, including his Sixth Amendment right to confront the eyewitness, his right to the effective assistance of an attorney who attempted to expose the flaws in the eyewitness' testimony during cross-examination and focus the jury's attention on the fallibility of such testimony during opening and closing arguments, the trial court's eyewitness-specific jury instruction, and the constitutional requirement that the State prove Appellant's guilt beyond a reasonable doubt. Liverman, 398 S.C. at 142-43, 727 S.E.2d at 428. For all of these reasons, Appellant's convictions should be affirmed.

II.

The trial court properly imposed reasonable limits on Appellant's cross-examination of State's witness Sean Echols where the interrogation sought: (1) was irrelevant, (2) was likely to confuse the issues, and (3) would not demonstrate a prototypical form of bias on the part of Echols.

Appellant argues the trial court erred in limiting his cross-examination of State's witness Sean Echols. Specifically, he argues the trial court improperly prohibited him from asking Echols: (1) whether he was "under investigation" or "charged" in a federal case involving the shooting of a corrections officer, and (2) whether during plea negotiations he sought a ten year sentence and had been offered a "cap" of twenty years. The State disagrees and submits Appellant's argument is without merit. The trial court appropriately exercised its discretion to impose reasonable limits on Appellant's cross-examination of Echols where both the federal investigation and the plea negotiations were not relevant to Echols' testimony at Appellant's trial, were likely to confuse the issues, and would not demonstrate a prototypical form of bias on the part of Echols.

Furthermore, any error in limiting Appellant's cross-examination of Echols was harmless in light of: (1) the existence of evidence corroborating Echols' testimony on material points, (2) the extent of the cross-examination Appellant was permitted to conduct, and (3) the overall strength of the State's case.

Standard of Review

As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed on appeal absent a manifest abuse of discretion. State v. Gracely, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012); State v. Quattlebaum, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000). Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses. State v. Aleksey, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff'd as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

"This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination." Aleksey, 343 S.C. at 33-34, 538 S.E.2d at 255; See also State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655,

659 (Ct. App. 2008) (finding the scope of cross-examination rests in the trial judge's sound discretion). "On the contrary, 'trial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.'" Aleksey, 343 S.C. at 34, 538 S.E.2d at 255 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)). "The limitation of cross-examination is reversible error if the defendant establishes he was unfairly prejudiced." State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness. State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting Van Arsdall, 475 U.S. at 680) (internal quotation marks omitted). The Mizzell court highlighted the competing concerns with regard to certain witnesses: The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. However, other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence. Id. at 331-32, 563 S.E.2d at 318.[4]

4 In Gracely, our supreme court revisited limitations on the scope of cross-examination in light of the Confrontation Clause and concluded: "The fact that a cooperating witness avoided a mandatory minimum

Discussion / Analysis

Appellant acknowledges he was allowed to fully cross-examine Echols about both: (1) his prior convictions for burglary and assault and battery with intent to kill; and (2) the maximum sentence he would have faced for his conduct in this case, including the possible life without the possibility of parole (LWOP) sentence he avoided by not being indicted for first degree burglary. Appellant, however, maintains the limitations imposed by the trial court in regard to the pending federal investigation and the plea negotiations with the State nonetheless violated his Sixth Amendment Rights. The State disagrees. "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Gillian, 360 S.C. at 450, 602 S.E.2d at 71 (emphasis added). Here, the trial court did not interfere with Appellant's opportunity for effective cross-examination.

The Federal Investigation

At the pre-trial hearing, Appellant argued that although Echols had not been convicted of a federal crime, he believed the shooting Appellant allegedly admitted to federal investigators would constitute a "bad act" Appellant should be permitted to ask Echols about in regard to his credibility. The trial court granted the State's motion to exclude any testimony regarding Echols' federal investigation for two reasons. First, the trial court found it was inadmissible under Rule 608(b), SCRE, because it was not probative of Echols character for truthfulness or untruthfulness. Second, relying on

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sentence is critical information that a defendant must be allowed to present to the jury." Gracely, 399 S.C. at 374-75, 731 S.E.2d at 886. "It is of no moment that at some point during the proceedings one of the witnesses confirmed the existence of a mandatory minimum sentence. The fact remains that Appellant was unable to fully develop this information through the cross-examination . . . ." Id. at 375 n.4, 731 S.E.2d at 886 n.4.

State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997), the trial court found any attempt to elicit testimony about the pending investigation would impermissibly allow the jury to draw an adverse inference from Echols' invocation of his right against self-incrimination, which would run contrary to the purpose of the Fifth Amendment. (R.p.86, line 17-p.88, line 14). At trial, Echols invoked his Fifth Amendment rights and the trial court went along with the pretrial ruling.

On Appeal, Appellant challenges the trial court's Fifth Amendment analysis and reliance on Hughes, as well as its reliance on the South Carolina Rules of Evidence. The State submits that even if the trial court's reliance on Hughes was slightly misplaced because Echols was not being called solely to allow the jury to draw an adverse inference from his refusal to testify, the limitation on cross-examination was nevertheless an appropriate exercise of discretion because the pending federal investigation simply does not show bias. The State has no authority to negotiate a deal with a witness in regard to federal charges. Appellant asserts "the purpose of the examination was to demonstrate that Echols had additional charges pending against him, which may influence his testimony against [Appellant];" however, he fails to articulate how this would be the case. Instead, it appears to be a thinly veiled attempt to introduce evidence of Echols' prior "bad act" to prove his bad character - a use clearly not permitted under Rule 404(b), SCRE. Thus, the interrogation sought was irrelevant and would likely confuse the jury. In addition, it would not expose the jury to facts from which the jurors could appropriately draw inferences relating to Echols' reliability. Thus, the questions about the federal investigation were appropriately excluded.

The Expired Plea Offer

At a pretrial hearing, the solicitor explained the State provided Appellant with the terms of an expired plea offer it had given Echols, but further explained there had been no offers or negotiations concerning Echols testimony in this case. (R.p.50, line 15-p.51, line 20). At trial, Echols confirmed he had not been offered or promised anything in exchange for his testimony. (R.p.212, line 14-p.213, line 4). Appellant then sought to question Echols about the specific terms of the expired plea offer, despite it having no connection to Echols testimony at trial. The solicitor suggested those questions should be prohibited pursuant to Rule 410, SCRE, because the terms of the expired offer were part of plea negotiations. The trial court agreed and prohibited Appellant from asking about the expired plea offer.

On Appeal, Appellant challenges the trial court's analysis and apparent reliance on Rule 410 of the South Carolina Rules of Evidence. The State submits that even if the trial court's reliance on Rule 410, SCRE, was off target, the limitation on cross-examination was nevertheless an appropriate exercise of discretion because the terms of the expired plea offer simply do not show bias in regard to Echols testimony. Appellant asserts "the plea negotiations between Echols and the State should have been revealed to the jury as evidence of bias;" however, similar to his analysis regarding the federal charges, he fails to explain how. Appellant references Mizell, and its holding that the lack of a negotiated plea "creates a situation where the witness is more likely to engage in biased testimony in order to obtain a recommendation of leniency." Mizell, 349 S.C. at 332, 563 S.E.2d at 318. He argues: "Echols' testimony regarding his plea negotiations is the type of evidence of bias envisioned in Mizell." The State

disagrees. The testimony envisioned in Mizell is precisely the testimony that was already elicited from Echols – that he had no deal. The terms of an expired plea deal – one that was not offered in exchange for trial testimony – is irrelevant and would likely confuse the jury. In addition, it would not expose the jury to facts from which the jurors could appropriately draw inferences relating to Echols' reliability. Therefore, the questions about the expired plea deal were appropriately excluded.

Harmless Error

In Gracely our supreme court acknowledged "[a] violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." Id. at 375, 731 S.E.2d at 886. Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include [1] the importance of the witness's testimony in the prosecution's case, [2] whether the testimony was cumulative, [3] the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, [4] the extent of cross[-] examination otherwise permitted, and, of course, [5] the overall strength of the prosecution's case. Id. (quoting Van Arsdall, 475 U.S. at 684 (emphasis added in Gracely)).

The purpose of Rule 608(c), SCRE, is that a defendant be allowed to explore any "bias, prejudice, or other motive to misrepresent" such that the jury gets a clear picture of a witness with which to judge her credibility. Cross-examination is the tool used to highlight any biases that may exist. Here, the trial court allowed a meaningful cross-examination with numerous opportunities for impeachment, including specifically allowing Appellant to inquire into whether Echols believed he would get some sort of leniency in exchange for testifying. Echols admitted he was not indicted

for first degree burglary and was avoiding an LWOP sentence, but testified he had not yet been given any deals or plea bargains in exchange for his testimony. Just as the Court pointed out in Mizzell, this particular testimony was highly probative of bias because the jury could have inferred that Echols would be more likely "to engage in biased testimony in order to obtain a future recommendation for leniency." Mizzell at 332-33, 563 S.E.2d at 318. The additional cross-examination sought by Appellant would at best have been marginally relevant.

In regard to overall strength, Appellant argues Echols' testimony was an essential part of the State's case, and that without his testimony, the State had no evidence that Appellant helped plan the crime. He also notes that Echols was the only person to testify Appellant was the assailant that assaulted Rumph. Although Echols accomplice testimony was important, it was only a portion of the strong testimony against Appellant. Established case law in South Carolina has held that a conviction can stand upon the uncorroborated testimony of an accomplice. See State v. Taylor, 255 S.C. 147, 149-150, 177 S.E.2d 550, 551 (1970). Here by comparison, the testimony was largely corroborated by the eyewitness identification testimony from Wright proving Appellant was an active participant in all of the crimes. It was also corroborated in part by Appellant's statement to the police where he admitted he was at the scene of the crimes. As noted by our supreme court, "In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless." Gracely, 399 S.C. at 377, 731 S.E.2d at 887. Here, the case was not built on circumstantial evidence and Echols' testimony alone. Appellant suffered

no unfair prejudice as a result of the limitations placed on his cross-examination of Echols concerning the federal investigation and the plea negotiations. See State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Thus, the trial court did not err.

III.

The trial court properly denied Appellant's motions for a directed verdict and for a new trial on all charges where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each charge.

Appellant argues the trial court erred in denying his motion for a directed verdict and his motion for a new trial because the evidence presented did not support the convictions in this case. He argues the evidence did not reasonably tend to prove his guilt with respect to first degree burglary, armed robbery, or assault and battery. The State disagrees and submits Appellant's arguments are without merit. Detailed eyewitness testimony from Appellant's accomplic Echols and victim Wright provided direct evidence of Appellant's active participation in the first degree burglary of the residence, the armed robbery of Wright and Rumph, and the first degree assault and battery of Rumph. Additionally, Appellant's statement to the police, testimony from victim Rumph, and testimony from the investigating officers provided substantial circumstantial evidence to reasonably support the direct evidence of the crimes. The State submits the trial judge properly considered the existence of evidence as opposed to its weight in denying Appellant's motions for a directed verdict and a new trial, and in submitting the case to the jury. Therefore, Appellant's convictions and sentence should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-78 (2004). Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

First Degree Burglary

"A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either . . . the

entering or remaining occurs in the nighttime. S.C. Code Ann. § 16-11-311 (2003). "'Enters a building without consent' means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession." S.C. Code Ann. § 16-11-310 (2003). Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling. State v. Pinckney, 339 S.C. 346, 349-50, 529 S.E.2d 526, 527-28 (2000).

At trial, the State presented testimony from Wright describing the armed robbery and assault. Wright explained how the two assailants convinced him to let them enter the house before the assault and robbery. He made several in-court identifications of Appellant as one of the intruders and participants in the crimes. (R.p.105, line 22-p.115, line 14). Rumph also described the armed robbery and assault and identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19).

The State then presented testimony from Echols himself. Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols then described the entire incident in great detail, including the lie he told Wright so he and Appellant could gain consent to enter the residence, and Appellant's active participation in the armed robbery and assault. (R.p.207, line 1-p.212, line 8).

Appellant complains that the only evidence presented to support his conviction for burglary came from Echols, whom he was not able to fully cross-examine. He argues

that without Echols' testimony, there was "no evidence" Appellant was at the scene by pre-arrangement to aid, encourage or abet, in the perpetration of the crime. This argument completely disregards the eyewitness testimony from Wright. Wright's testimony alone would survive a directed verdict motion for first degree burglary, because the jury was free to base its determination of Appellant's intent on evidence of his actions once inside the dwelling. Pinckney, supra. But Wright's testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Echols. Furthermore, any additional cross-examine of Echols would only impact his credibility as a witness. Credibility goes to the weight of evidence, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra.

Armed Robbery

Armed robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010); S.C. Code Ann. § 16-11-330(A) (2003). Robbery is the crime of larceny accomplished with force, and armed robbery occurs when a person commits robbery while armed with a deadly weapon. Id. at 532, 689 S.E.2d at 613-14.

Wright testified one of the intruders pointed a pistol at his chest, and he identified Appellant as that intruder. He described being forced to his room, getting hit in the head with the pistol, and having his money taken before the Appellant and the other intruder left in Rumph's car. (R.p.108, line 23-p.115, line 14). Rumph also described being threatened, repeatedly cut with a knife, and robbed of his money, pants, a hat, and his car. Rumph identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19).

The State then presented testimony from Echols himself. Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols then described the entire incident in great detail, including their use of a pistol and a knife and Appellant's active participation in the armed robbery and assault. He testified he and Appellant took money, a pair of pants, a hat, and a car from the residence. (R.p.207, line 1-p.265, line 8).

Appellant argues there was no evidence he took anything from anyone, or that he participated in taking anything. He contends Wright's testimony identifying him as one of the intruders is unreliable, and that without it there was no evidence he took anything from the victims. This argument completely disregards the testimony from Echols. Echols' testimony alone would survive a directed verdict motion for armed robbery because, under the "hand of one is the hand of all" theory of accomplice liability, each intruder is guilty for everything done by his or her confederate incidental to the execution of their common design or purpose. State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 769 (Ct. App. 2010). But Echols' testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Wright. Furthermore, absent outright exclusion, any attack on the reliability of Wright's identification of Appellant would only impact the weight given to his testimony, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra.

First Degree Assault and Battery

"A person commits the offense of assault and battery in the first degree if the person unlawfully . . . injures another person, and the act . . . occurred during the commission of a robbery, burglary, kidnapping, or theft." S.C. Code Ann. § 16-3-600(C) (Supp. 2013).

The State elicited testimony from Rumph that he was threatened and repeatedly cut with a knife while he was robbed of his money, pants, a hat, and his car. Rumph identified Sean Echols as the second intruder but was unable to identify the first intruder, except to say he had dreadlocks. Rumph said the man with the dreads first came into his room with a pistol, but later traded weapons with the Echols, and then proceeded to cut him with a knife. (R.p.135, line 25-p.143, line 19). Subsequently, Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols described the entire incident in great detail, including Appellant's active participation in the armed robbery and assault. He testified that when they entered the house Appellant had a gun and Echols had a knife, but they later traded weapons, and Appellant inflicted the cuts to Rumph before they left with the stolen goods. (R.p.207, line 1-p.212, line 8).

Appellant notes that Rumph never identified Appellant as the person who cut him despite having the best opportunity to view the perpetrator. He then complains, as he did in regard to the first degree burglary, that the only evidence presented to support his conviction for assault and battery came from Echols, whom he was not able to fully cross-examine. As explained above, any additional cross-examine of Echols would only

impact his credibility as a witness. Credibility goes to the weight of evidence, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra. Thus, there was substantial direct and circumstantial evidence that Appellant committed first degree assault and battery against Rumph.

Conclusion

Viewing the evidence in a light most favorable to the State, there was ample evidence for the jury to reasonably conclude Appellant committed first degree burglary, armed robbery of both Wright and Rumph, and first degree assault and battery of Rumph. Therefore, the evidence was sufficient, as a matter of law, to submit the case to the jury. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."). The trial judge committed no error in denying Appellant's motions for a directed verdict and for a new trial, and Appellant's convictions should be affirmed.

IV.

The trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred the lesser, rather than the greater, offense was committed.

Appellant argues the trial court erred in failing to charge the lesser included offense of assault and battery in the second degree as to Rumph, because Rumph's injury

did not rise to the level of "great bodily injury" as defined in the relevant statute. He maintains there was evidence by which it could be inferred that Rumph only suffered "moderate bodily injury" and therefore the jury could have found Appellant only committed second degree assault and battery. The State disagrees and submits Appellant's argument is entirely without merit. A person commits assault and battery in the first degree if the person unlawfully "injures another person," and the act occurred "during the commission of a robbery, burglary, kidnapping, or theft," regardless of the severity of that injury. S.C. Code Ann. § 16-3-600(C). Thus, whether Rumph's injury was a "great bodily injury" or a "moderate bodily injury" is of no moment, and no evidence was presented at trial to support a charge on the lesser included offense of assault and battery in the second degree as to Rumph. For the same reason, even if the trial court's decision was error, it was harmless because the jury's verdict reflected it could not have convicted Appellant of second degree assault and battery even if the option had been available. The jury specifically determined Appellant was guilty of committing both a burglary and a robbery, either of which mean that any injury to Rumph was necessarily an assault and battery in the first degree. For these reasons, Appellant's convictions should be affirmed.

Standard of Review

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). "Ordinarily, the trial court has the duty to give requested

instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993).

"A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

Analysis / Discussion

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 substantially overhauled the state's criminal law in regard to assault and battery offenses. It codifies attempted murder in section 16-3-29 and four degrees of assault and battery in section 16-3-600. S.C. Code Ann. §§ 16-3-29 & 16-3-600 (Supp. 2013). The new degrees of assault and battery are, in descending order of severity, assault and battery of a high and

aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees. Under the statute, ABHAN is a lesser-included offense of attempted murder. Id. § 16-3-600(B)(3). Assault and battery in the first degree is a lesser-included offense of both attempted murder and ABHAN. Id. § 16-3-600(C)(3). Further, assault and battery in the second and third degree are each lesser-included offenses of every preceding offense. Id. § 16-3-600(D)(3) & (E)(3).

At trial, the judge advised he would be charging attempted murder, as well as the lesser included offenses of ABHAN and assault and battery in the first degree as to both victims, Wright and Rumph. He said he would also charge the lesser included offense of assault and battery in the second degree as to Wright, but not as to Rumph. Appellant objected and asked the court to charge assault and battery in the second degree as to Rumph, arguing he felt "that it fits moderate bodily injury." The trial judge found Rumph could not have suffered only moderate bodily harm when he was cut five times, denied Appellant's request, and noted Appellant's objection. (R.p.249, line 15-p.251, line 1). Appellant now contends this was error.

In relevant part, the statute provides:

> (C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:
>
> > (a) **injures** another person, **and** the act: (i) involves nonconsensual touching of the private parts ... with lewd and lascivious intent; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft, **or**
> >
> > (b) **offers or attempts to injure** another person with the present ability to do so, **and** the act: (i) is accomplished by means likely to produce death or great bodily injury; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C.Code Ann. § 16-3-600(C)(1) (emphasis added). The trial judge misconstrued the statutory definition of assault and battery in the first degree as requiring great bodily injury to the victim. While subsection (b) does require that the acdt be "accomplished by means likely to produce death or great bodily injury," this only applies when there is "an offer or attempt to inure" rather than an actual injury. Assault and battery in the first degree also comprises subsection (a) of the statute. See Brewer v. Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963) ("The word 'or' used in a statute, is a disjunctive particle that marks an alternative. The word 'or' used in a statute imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both.") (citations omitted). Under subsection (a), any injury constitutes assault and battery in the first degree if it occurs during the commission of a robbery, burglary, kidnapping, or theft. It is undisputed that the elements of subsection (a) are met in this case.

Here, the trial judge properly declined to instruct the jury on assault and battery in the second degree because the evidence presented during trial only supported a conclusion Rumph was injured during the commission of a burglary and robbery. Based on that evidence, the jury could only find that Appellant committed assault and battery in the first degree, committed a greater offense, or was not guilty. See State v. Mallory, 270 S.C. 519, 523, 242 S.E.2d 693, 695 (1978) ("[I]t is not error to refuse to submit the question of simple assault and battery to the jury under an indictment for assault and battery of a high and aggravated nature, unless there is testimony tending to show that the defendant is only guilty of a simple assault and battery." (emphasis added)); see also State v. Small, 307 S.C. 92, 94, 413 S.E.2d 870, 871 (Ct. App. 1992) ("The evidence does not warrant the charge of the lesser offense of simple assault. Small was guilty of

assault and battery of a high and aggravated nature or not guilty. Accordingly, there is no merit to his claim that the court erred in refusing to give the requested charge.").

On appeal, Appellant contends he was entitled to a jury instruction on assault and battery in the second degree because there was evidence by which it could be inferred that he committed only that offense. To the contrary, the evidence established either Appellant injured Rumph during a burglary and robbery, or he did not injure, rob, and burglarize Rumph at all. Accordingly, as no evidence was presented supporting a finding the assault on Rumph constituted an assault and battery in the second degree, the trial judge did not err in declining to instruct the jury on the lesser included offense. Appellant's convictions should be affirmed.

Harmless Error

Errors are considered to be harmless when they could not reasonably have affected the result of the trial. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003). "It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him." State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 285, 288 (1947). When a review of the entire record establishes an error is harmless beyond a reasonable doubt, an appellate court should not reverse a conviction. State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

In the case at bar, even assuming the trial judge erred in declining to the instruct the jury on the lesser-included offense of second degree assault and battery, any error was entirely harmless and had no impact on the ultimate outcome of Appellant's case in light of the verdict returned by the jury. Accordingly, the trial judge's decision not to instruct

the jury on simple assault and battery resulted in no prejudice to Appellant and had no impact on the outcome of his case even if the trial judge's decision was an erroneous one. See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); see also State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial."), overruled on other ground by Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009). Appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
June 18, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

THE STATE,.....RESPONDENT

v.

RICHARD LANARD SPRINKLE,.....APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated June 18, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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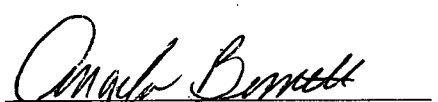
I further certified that all parties required by Rule to be served have been served. This 18th, day of June 2014.



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