STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAURICE ALPHONSO ROBERTS, JR.,

APPELLANT,

Appellate Case No. 2014-000468.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

KAYCIE S. TIMMONS
Assistant Attorney General
SC Bar No. 100237

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

DAN JOHNSON
Solicitor, Fifth Circuit
P.O. Box 192
Columbia, SC 29201
(803) 576-1800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Federal Cases

State Cases

Rules

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. Whether the court erred by allowing incarcerated inmate, Demetrice James, to testify at the behest of the state that he was transported to court with appellant since any relevance this testimony had was substantially outweighed by its unduly prejudicial effect, since it impermissibly informed the jury that appellant was incarcerated during his trial, and thereby diluted the presumption of innocence?

II. Whether appellant's case should be remanded for resentencing where the court failed to adequately consider the fact appellant was a juvenile at the time of the crime, and it imposed a de facto life sentence where appellant's relative culpability should have been considered during an individualized sentencing hearing?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court abused its discretion by admitting evidence that Appellant was transported to court with his co-defendant, who was incarcerated, where that information was part of the co-defendant's testimony that Appellant had threatened him the day before he testified.

II. Whether Appellant is entitled to an individualized resentencing hearing where a request for such a hearing was not made at trial and where Appellant received a sentence of forty-five years.

RESPONDENT'S STATEMENT OF THE CASE

A Richland County Grand Jury indicted Appellant, Maurice A. Roberts, in February 2013 for the murder of Brandon Jones (Victim). (Indictment Number 2013-GS-40-01452). Also at that time, Appellant was indicted for burglary first degree (Indictment Number 2013-GS-40-01449), two counts of attempted murder (Indictment Numbers 2013-GS-40-01458 & 2013-GS-40-01460), and attempted armed robbery (Indictment Number 2013-GS-40-01481).

On February 24, 2014, Appellant's case was called to trial before the Honorable Doyet A. Early, III. (Tr. p. 1). Appellant was represented by Tivis C. Sutherland, IV, Esquire, during the five-day trial. (Tr. p. 1). Assistant Solicitors Kathryn Luck Campbell, Nicole M. Simpson, and Meghan L. Walker represented the State. (Tr. p. 1). On February 28, 2014, the jury returned a verdict of guilty on all counts as charged. (Tr. p. 921, line 19–p. 925, line 6). Judge Early sentenced Appellant to forty-five years imprisonment for murder, to forty-five years imprisonment for burglary first, to thirty years imprisonment for each of the attempted murder convictions, and to twenty years imprisonment for attempted armed robbery. (Tr. p. 937, lines 5–18). The sentences were set to run concurrently. (Tr. p. 937, lines 16–18).

On March 7, 2014, Appellant filed a renewal of his motions and objections and a motion for a new trial. (Renewal of Motions and Objections and Motion for a New Trial). The trial court denied Appellant's post-trial motions in a hearing held March 11, 2014. (March 11, 2014 Tr. pp. 1–21).

Thereafter, on March 13, 2014, Appellant served a notice of appeal. (Notice of Appeal).

RESPONDENT'S STATEMENT OF THE FACTS

The Burglary: Victims' Perspectives

The evening of January 25, 2013, Trenton Scott was hanging out at home with his brother Troy Scott, with his brother's girlfriend Cari Pearson, and with friends Joshua Williams and Brandon Jones. (Tr. p. 327, line 23–p. 330, line 9). The home belonged to Trenton and Troy's parents, Chandler[1] and Gwendolyn Sugar Davis, who were upstairs at the time. (Tr. p. 233, lines 5–15; Tr. p. 248, line 22–p. 249, line 14). Trenton, Troy, and their friends were in the downstairs part of the home where there was a small recording studio with a laptop computer, a microphone, and speakers. (Tr. p. 324, line 1–p. 330, line 9). Jones was recording music. (Tr. p. 330, lines 2–7). Williams and Troy were playing a video game. (Tr. p. 233, lines 16–24).

Around 10 o'clock that night, Vincent Nelson[2] showed up downstairs. (Tr. p. 234, lines 2–17; Tr. p. 330, lines 10–18). Trenton had not seen Nelson in two months before that night.[3] (Tr. p. 330, line 13–p. 331, line 1). According to Trenton, Nelson was acting "out of character"—he was pacing back and forth, and he received a number of phone calls, which was odd since Nelson did not normally have a cell phone. (Tr. p. 331, lines 2–16). Williams overheard Nelson on the phone, saying "[']yo, I'm inside. I'm good. I'm good.[']" (Tr. p. 236, lines 1–3). At some point, Nelson began to pressure Jones to go outside to smoke a cigarette, and Jones eventually gave in. (Tr. p. 331, line

---

[1] Chandler Davis was Trenton and Troy's stepfather. (Tr. p. 248, line 22–p. 249, line 14).
[2] Nelson had numerous nicknames, including Junior, Calli G, Calli Junior, and J School. (Tr. p. 234, lines 11–17).
[3] Nelson stayed with Trenton and Troy's family occasionally. (Tr. p. 441, lines 2–21). According to Troy, his parents opened up their home to Nelson because "[h]e was just a little less fortunate than others." (Tr. p. 441, lines 15–18).

17–p. 332, line 1). Nelson went outside first, and Jones and Williams followed him. (Tr. p. 237, line 2–p. 238, line 5).

Outside, Williams smoked his cigarette and stood apart from Nelson and Jones, who stayed closer to the house. (Tr. p. 237, line 20–p. 239, line 10). Williams noticed three individuals walking back and forth in his vicinity. (Tr. p. 239, line 11–p. 240, line 6). Once Williams had finished his cigarette, he went back toward Nelson and Jones. (Tr. p. 240, lines 2–6). At that point, one of the three individuals walked up to Williams, put a gun in his face, and told him to get on the ground if he wanted to live. (Tr. p. 240, lines 7–13). The gunman then hit Williams with the gun, knocking him down the hill. (Tr. p. 240, lines 14–22). Next, the gunman approached Jones, who began begging for his life. (Tr. p. 240, line 23–p. 241, line 15). The gunman asked Jones where the keys to the car were, and Jones responded that he did not know. (Tr. p. 241, lines 16–22). The gunman then went up to Nelson and asked where the keys were, and Nelson responded, "[']it's two in the house.[']" (Tr. p. 242, lines 5–7). The other two individuals then came down the hill, and the gunman went into the house. (Tr. p. 242, lines 5–13). Williams testified that two of the burglars (who Williams did not identify) began beating him, and they attempted to rob him but were unable to find anything. (Tr. p. 242, lines 14–24). Williams could hear scuffling and glass breaking inside the house. (Tr. p. 242, line 5–p. 243, line 8).

Trenton, who had remained inside, testified that he was taking some hangers to a room downstairs when Appellant[4] ran toward him with the gun pointed at his head. (Tr.

[4] Both Trenton and Troy identified Appellant by name as one of the burglars who entered their house. (Tr. p. 332, line 12–p. 333, line 24; Tr. p. 448, line 13–p. 449, line 10). While neither of them knew Appellant at the time he came into their home, they learned

p. 332, line 2–p. 333, line 6). The lights were on, and Appellant did not have anything covering his face, so Trenton was able to get a good look at him. (Tr. p. 333, line 15–24). Appellant hit Trenton in the head with the gun, which caused Trenton to fall, but Trenton got back up and hit Appellant in the face, and Appellant fell into a glass table and dropped the gun. (Tr. p. 334, lines 3–24). The two then started scuffling to get the gun. (Tr. p. 334, lines 23–25). A man who Trenton identified as Demetrice James entered and got the gun, which Appellant had managed to retrieve at some point. (Tr. p. 334, line 21–p. 336, line 7). Around that time, Troy, who had heard the glass breaking, entered the room. (Tr. p. 336, lines 8–15; Tr. p. 448, lines 7–19). Troy pulled Trenton and Appellant apart. (Tr. p. 448, lines 13–25). Appellant attempted to go further into the house, but Trenton stopped him by throwing him to the ground. (Tr. p. 336, lines 8–15). James then pointed the gun at them and said, "[']I'm about to shoot.[']" (Tr. p. 336, lines 16–18). Trenton then picked Appellant up and held him "so . . . if he did shoot, he was going to hit him." (Tr. p. 336, lines 16–20). Trenton then pushed Appellant into Demetrice, and Trenton and Troy attempted to push the two burglars out and to barricade themselves further inside the house. (Tr. p. 337, lines 1–11). The brothers could not get the door closed, so they opened it and resumed fighting with Appellant and James. (Tr. p. 338, line 6–p. 340, line 23). The burglars began moving toward the back door to the house, but before they ran out, James fired a shot, which hit Trenton. (Tr. p. 340, line 19–p. 341, line 15).

Outside, Williams heard Nelson yelling "[']let's go, let's go, let's go.[']" (Tr. p. 243, lines 6–8). According to Williams, he then heard "[']600, 600 don't do it.['] Pow,

---

his name after-the-fact. (Tr. p. 332, line 12–p. 333, line 24; Tr. p. 448, line 13–p. 449, line 10).

pow, pow, pow, pow, pow, pow, . . ." and he felt a jolt of pain, but he no longer heard Jones. (Tr. p. 243, lines 15–20). Williams watched "eight pair of shoes run up the hill, and Vincent Nelson, Jr., was with them." (Tr. p. 243, lines 20–22).

The Burglary: Co-Defendants' Perspectives

Appellant's friend Jwaun Duckett and all of Appellant's co-defendants—Demetrice James,[5] Vincent Nelson, Jr., and Deshawn McClary[6]—testified against Appellant. Appellant and his four co-defendants were members of a rap group called 600.[7] (Tr. p. 403, lines 6–16; Tr. p. 663, line 11–p. 664, line 4).

Duckett testified that he was with Appellant on January 25, 2013, when Appellant talked about participating in "a lick."[8] (Tr. p. 408, line 6–p. 410, line 18). James, Nelson, and McClary were also present at the time. (Tr. p. 410, lines 9–16). Duckett informed the group that he did not want to be involved. (Tr. p. 409, line 3–p. 412, line 19).

Nelson told the group about the studio equipment at the Davis's house. (Tr. p. 521, line 5–p. 522, line 17). He also served as the "guinea pig" to get them into the house. (Tr. p. 521, line 14–p. 525, line 15). Nelson testified that he was given Appellant's cell phone, and the plan was for him to go in the house, and they would call him when they got there. (Tr. p. 529, line 18–p. 530, line 17).

---

[5] According to Duckett, James's nicknames include Metro and Young. (Tr. p. 421, line 24–p. 422, line 1). James denied that he is called any of those names and said his nicknames were Meat and Meachy. (Tr. p. 486, lines 10–17).

[6] Defense counsel told the jury that McClary's nickname was "600." (Tr. p. 219, lines 24–25). McClary testified that he had a tattoo of "600" on his left arm. (Tr. p. 663, lines 17–20).

[7] In a statement to police, Duckett told police that Appellant was a part of 600, but Duckett testified at trial that Appellant was not a member of 600. (Tr. p. 410, line 19–p. 411, line 13).

[8] "A lick" is a break-in. (Tr. p. 409, lines 3–13).

James testified that he got together with Appellant and McClary on the night of January 25, 2013, and he agreed to go with them to meet up with Nelson at a studio. (Tr. p. 487, line 17–p. 489, line 11). According to James, he saw Nelson at the end of the driveway talking with another individual, and when he went to greet Nelson, Appellant ran past him and ended up in an altercation with one of the individuals. (Tr. p. 489, lines 12–23). James followed, but by the time James got to where Appellant had been, Appellant had moved on to another altercation. (Tr. p. 490, line 10–p. 492, line 13). James admitted to getting involved in that second altercation, which took place inside the house, though he claimed he participated because Appellant was "a dear friend," and he did not want him to get beat up. (Tr. p. 492, lines 2–16). James saw Appellant pull out a gun in the midst of the fighting, but Appellant dropped it, and James went and picked it up. (Tr. p. 493, line 9–p. 494, line 5). James testified that he tried to run out the door, but his arm got caught in the door, at which time the gun was snatched from him, and it went off. (Tr. p. 494, lines 1–14). Once James got outside, he started running, but he turned back to see Appellant standing over someone in the driveway. (Tr. p. 495, line 1–p. 496, line 12). James saw Appellant shoot once, but he heard several shots after that. (Tr. p. 496, line 6–p. 497, line 10).

McClary, who had remained outside, heard a gunshot a couple minutes after Appellant and James went inside the house. (Tr. p. 672, line 4–p. 675, line 22). James then came running out of the house with Appellant behind him. (Tr. p. 676, lines 4–6). According to McClary, Appellant had the gun in his hand at that point. (Tr. p. 676, lines 7–20). McClary heard Nelson yell, "[']600 let's go.[']" (Tr. p. 676, line 23–p. 677, line

8). Then, McClary "heard shots going off. [He] looked. Maurice was standing over the fellow shooting." (Tr. p. 677, lines 10–11).

Nelson also ran away after the failed robbery. (Tr. p. 543, line 4–p. 544, line 6). Nelson heard a number of shots as he was running away.[9] (Tr. p. 543, line 18–p. 544, line 8). According to a statement he made to police, Nelson also heard either James or McClary yelling, "[']Get that n*****; get that n*****.[']" (Tr. p. 545, line 5–p. 546, line 22). Nelson testified that he, Appellant, and McClary met back at Appellant's house. (Tr. p. 546, line 23–p. 547, line 21). Appellant went upstairs to change clothes, and he put bleach on the clothes he had worn during the attempted robbery.[10] (Tr. p. 548, line 4–p. 549, line 1).

Duckett got a call from Appellant around midnight on January 26th. (Tr. p. 414, line 7–p. 417, line 1). Appellant wished Duckett a happy birthday, but when Duckett asked about going over to Appellant's place, Appellant told him not to come over because there was too much going on. (Tr. p. 416, line 1–p. 417, line 1).

The Burglary: Appellant's Version

Appellant gave a statement to police on January 28, 2013, in which he recalled the events of January 25, 2013. (Tr. p. 740, line line 12–p. 744, line 11). Appellant admitted that he was with "600," "Metro," and "Junior" that night and that there was a plan to do "a lick," but he distanced himself from the shooting, claiming that "600" was the one with the gun during the burglary. (Tr. p. 740, line 12–p. 744, line 11). When police

---

[9] Nelson had earlier testified that Appellant had a gun the night of the burglary, but he did not testify as to who had the gun when he heard the shots go off. (Tr. p. 538, line 3–p. 539, line 22).

[10] McClary's testimony corroborated this. McClary testified that when they arrived at the house, Appellant went upstairs, and then McClary smelled bleach. (Tr. p. 680, line 18–p. 681, line 2).

asked Appellant what he was wearing that night, he answered, "[b]rown camouflaged pants, black hoodie with a hole in the left shoulder. I accidentally bleached it yesterday when I was doing the dishes." (Tr. p. 743, lines 22–25).

The police concluded that Appellant was the shooter from the evidence they collected. (Tr. p. 810, lines 1–6). The Scott brothers identified Appellant as one of the participants in the crime. (Tr. p. 808, line 22–p. 809, line 4). Regarding Appellant's account of January 25th, Major James Smith testified as follows:

> His account—basically he supplanted himself for Mr. McClary. He is identified not only by the Scott brothers. All three co-defendants identified his actions that he tried to put on Mr. McClary in his statements. So, he simply tried to insert himself in Mr. McClary's role as being the person that was out in the driveway when all the evidence and all the statements indicate that he was with Mr. James in the house.

(Tr. p. 809, lines 8–15).

ARGUMENT

I.

The trial court did not err in allowing a co-defendant to testify that Appellant threatened him while they were being transported to court for Appellant's trial.

Introduction

The court did not abuse its discretion in permitting a co-defendant to testify that he and Appellant were transported together since that information was part of the co-defendant's testimony that Appellant threatened him when they were together the day before Appellant's trial. The evidence did not prejudice Appellant because the fact that Appellant and James were transported together was only mentioned very briefly. Furthermore, it would not have been surprising to the jury that a person charged with murder, first degree burglary, two counts of attempted murder, and attempted armed robbery was in custody while awaiting and during trial.

How the Issue Was Raised

After testifying about what happened the night of January 25, 2013, Demetrice James admitted that he was facing various charges both for his participation in the January 25th crimes and for other unrelated offenses. (Tr. p. 503, line 8–p. 505, line 3). James testified that he had not been promised anything in exchange for his testimony, but he stated that he had been threatened "in a sense." (Tr. p. 505, lines 4–19). The State went on to question James about the threats he had received:

Q. Now, we mentioned threats. Were you actually transported with the defendant, Maurice Roberts?

A. Yes, ma'am.

Q. And that occurred today?

A. Yesterday.

MR. SUTHERLAND: Your Honor, briefly, may we approach?

(OFF-THE-RECORD BENCH CONFERENCE.)

MR. SUTHERLAND: Yes, sir, just like to object to the testimony regarding my client being currently incarcerated.

THE COURT: Overruled.

MR. SUTHERLAND: On the grounds that it's prejudicial.

THE COURT: Overruled.

BY MS. SIMPSON:

Q. So, Demetrice, were you actually transported with Maurice Roberts here today?

A. Well, not today but yesterday.

Q. Yesterday, and did you speak with him or did he speak to you?

A. Yes, ma'am.

Q. Can you tell the jury what he said to you?

A. He told me that if I didn't testify today, that he would try to free my name out of this, but if I did, that I should just remember that he know where my dad live at.

Q. Okay, and how did you respond?

A. I asked him what he meant by that.

Q. And did he say anything back to you?

A. He told me whatever it means to me.

Q. Okay, and did you view that as a threat?

A. Yes, ma'am.

(Tr. p. 505, line 20–p. 506, line 23).

In his post-trial motion, Appellant renewed his objection to the testimony which revealed Appellant was incarcerated at the time of trial:

> Over Defense objection, the State introduced testimony that Roberts was incarcerated pretrial. The criminal process presumes that a citizen accused of a crime is innocent. Testimony that the citizen is incarcerated and has been for 13 months for the offense being tried undermines that presumption of innocence. See Missouri v. Deck 125 S.Ct. at 2013 (The issue in Deck was shackling a defendant in front of a jury but the principle at issue is identical). That Roberts was incarcerated and had been so for 13 months was not relevant to the proceedings; ad arguendo if it were, the prejudicial effect of undermining the presumption of innocence far outweighed any claim the State might make towards relevance where the incarceration was the result of an arrest for the offense being tried, rather than the locus of a subsequent offense for which a citizen was on trial.

(Renewal of Motions and Objections and Motion for New Trial p. 4). The trial judge denied Appellant's motion, noting he "specifically remember[ed] advising the jury that the marijuana questions had nothing to do with this, they weren't to discuss that and to consider no instances, et cetera."[11] (March 11, 2014 Tr. p. 18, lines 18–21).

Standard of Review

Generally, "[t]he admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's discretion will not be reversed absent an abuse of discretion." *State v. Morris*, 376 S.C. 189, 205–06, 656 S.E.2d 359, 368 (2008) (citing *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 570,

[11] It appears that the trial judge was referring to a separate portion of the trial where evidence was introduced that police found marijuana when they searched Appellant's home. (Tr. p. 731, line 12–p. 732, line 3). The trial court gave a curative instruction at that time that the jury was not to consider that information. (Tr. p. 731, line 20–p. 732, line 1).

647 S.E.2d 144, 166–67 (2008) (citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)).

Analysis

The trial court did not abuse its discretion in admitting testimony that James and Appellant were transported to the courthouse together.

The testimony that Appellant had threatened James, who was both a co-defendant and a witness to the events of January 25, 2013, in an attempt to prevent him from testifying was relevant. *See State v. Edwards*, 383 S.C. 66, 71, 678 S.E.2d 405, 407 (2009) (recognizing "that '[e]vidence that a person charged with [a] crime procured or attempted to procure the absence of a witness or to bribe or suppress testimony against him tends to show unrighteousness of defendant's cause and a consciousness of guilt'" (quoting *State v. Goodson*, 225 S.C. 418, 429, 82 S.E.2d 804, 809 (1954) (Eatmon, Acting J., concurring))). And the fact that James and Appellant had been transported together explained why James and Appellant had had contact with each other that close to Appellant's trial. The evidence that James and Appellant had been transported together the day before helped to corroborate James's testimony that Appellant threatened him. The State was entitled to introduce evidence of Appellant's threat as part of its case. *See State v. Johnson*, 338 S.C. 114, 122–23, 525 S.E.2d 519, 523 (2000) ("[I]t is generally recognized that the prosecution and the defense should be afforded wide discretion in the selection and presentation of evidence." (citing *State v. Richardson*, 253 S.C. 468, 474, 171 S.E.2d 717, 719 (1969) ("The prosecution is required to prove the guilt of the defendant beyond a reasonable doubt and may, in its discretion, determine what witnesses will be called in presenting such proof."), *cert. denied*, 396 U.S. 955 (1969); *Imbler v.*

Pachtman, 424 U.S. 409, 426 (1976) ("Attaining the system's goal of accurately determining guilt or innocence requires that both the prosecution and the defense have wide discretion in the conduct of the trial and the presentation of evidence.")).

No Prejudice

Appellant asserts that he was prejudiced by the admission of evidence that he was transported with James, which implied that he was incarcerated at the time of trial. According to Appellant, the evidence diluted the presumption of innocence that he was entitled to. Respondent disagrees.

Appellant compares the admission of evidence that he was transported to the courthouse with his incarcerated co-defendant to the situation where a defendant is tried before a jury while wearing prison clothes. The United States Supreme Court has recognized that when a defendant is forced to go to trial in prison clothes, "the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment." *Estelle v. Williams*, 425 U.S. 501, 504–05 (1976). However, the mere mention of Appellant's transport is not the kind of continuing image that the Supreme Court recognized in *Estelle* could prejudice a jury. Here, there was only a passing reference to Appellant's incarcerated status, which did not prejudice him. *See United States v. Shaver*, 511 F.2d 933 (4th Cir. 1975) (finding a "'brief sighting' of an accused in handcuffs is not per se prejudicial").

Additionally, the jury was well aware that Appellant was charged with murder, first degree burglary, two counts of attempted murder, and attempted armed robbery. Respondent submits that it was neither surprising nor prejudicial for the jury to learn that Appellant was in custody at the time of trial, particularly in light of the seriousness of the

numerous charges he was facing. It also would not have been surprising to the jury that Appellant was in custody since his co-defendants, who were charged with the same crimes, were all in custody.[12] In a case decided prior to *Estelle*, our supreme court found that a trial judge did not abuse his discretion in denying a motion for a mistrial after the jury saw the defendants "being shackled and being prepared to be taken to the county jail." *State v. Moore*, 257 S.C. 147, 151, 184 S.E.2d 546, 548 (1971). The court favorably cited a Wisconsin case that recognized the following:

> "[W]hen a jury or members thereof see an accused outside the courtroom in chains or handcuffs the situation is psychologically different and less likely to create prejudice in the minds of the jurors. . . . People normally expect to see a prisoner under some restraints in situations where he is able to escape if not in restraints."

Id. at 152–53, 184 S.E.2d at 549 (quoting *State v. Cassel*, 48 Wis.2d 619, 625, 180 N.W.2d 607, 611 (Sup. Ct. 1970)). Appellant was not prejudiced by the evidence implying that he was in custody at the time of trial.

Respondent further notes that, at the point when James testified that he had been transported with Appellant, there had already been evidence introduced at trial that indicated that Appellant was incarcerated for at least a portion of the time between the murder and Appellant's trial. For example, James testified that he only found out that someone had been murdered when his father asked if he had heard "about Maurice getting locked up for murder. . . ." (Tr. p. 499, lines 5–11). Defense counsel did not object to that evidence. And prior to James's testimony, Jwaun Duckett testified that he spoke to Appellant about who did the shooting, and Appellant told him that "[t]he person

[12] During his instructions, the trial judge informed the jury that, as to the witnesses who had prior records, "the only consideration you can give on the past record is using that to determine his or her believability or credibility." (Tr. p. 903, lines 13–22).

who really did it going around the jail bragging saying he did it." (Tr. p. 425, lines 11–13). On cross-examination, Duckett further explained that he had heard James going around telling people he had done the shooting. (Tr. p. 431, line 8–p. 432, line 17). Defense counsel followed up by asking if Appellant, James, and Duckett were all present for that conversation, and Duckett responded, "Nah . . . . I was in a dorm with everybody . . . . That went around the whole jail." (Tr. p. 432, lines 1–7). Thus, even prior to James's testimony, defense counsel actually elicited testimony that at least implied Appellant was incarcerated. Because Appellant's incarcerated status had already been alluded to at trial, Appellant was not prejudiced by James's testimony that he and Appellant were transported together. *See Estelle*, 425 U.S. at 507 (recognizing that courts have refused to find error where a defendant was tried while wearing prison clothes but the defendant was being tried for committing an offense while in confinement or in an attempt to escape and, to that same point, further favorably citing a court of appeals decision that noted "[n]o prejudice can result from seeing that which is already known").

For all of the above reasons, the presumption of innocence attached to Appellant throughout trial was not diluted by the limited evidence that Appellant and his incarcerated co-defendant had been transported together.[13] That evidence was relevant to

[13] Nor should the evidence have been excluded as more prejudicial than probative under Rule 403, SCRE. Defense counsel did not specifically mention Rule 403, SCRE, or any argument that the evidence was more prejudicial than probative when he objected to James's testimony—defense counsel only stated that it was prejudicial. However, in his post-trial motion, Appellant asserted the prejudice "far outweighed" any relevance to the State. (Renewal of Motions and Objections and Motion for New Trial p. 4). Appellant now argues that the evidence that Petitioner was transported to court was more prejudicial than probative. This argument does not warrant relief since, as discussed above, the evidence had probative value and did not unduly prejudice Appellant.

the State's case, and the trial judge did not abuse his discretion in admitting that evidence.

Harmless Error

If this Court were to find that the trial court erred in admitting evidence that Appellant was transported to court the day before his trial, the error was harmless because the impact of this nugget of evidence was minimal.

> "Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case."

State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)).

As outlined above, the State's case against Appellant was very strong—not only did all of Appellant's co-defendants testify against him, but the victims also identified Appellant as one of the burglars, and there was plenty of circumstantial evidence to corroborate the direct evidence presented by the State. The effect of the admission of evidence that implied Appellant was in custody at the time of his trial was isolated and inconsequential, and any error that resulted from the admission of that evidence was harmless.

II.

Appellant's claim that he should have received an individualized sentencing proceeding due to his age at the time of his crimes is not preserved.

Introduction

Appellant never requested an individualized sentencing proceeding, and this issue is not preserved. Additionally, there was no need for an individualized sentencing proceeding since Appellant received a forty-five year sentence.

Appellant's Sentencing Proceedings

After the jury delivered its guilty verdicts, the trial judge heard from both sides regarding the sentence that should be imposed. (Tr. p. 927, line 3–p. 935, line 15). Defense counsel requested that the court impose the minimum sentence. (Tr. p. 928, line 24–p. 929, line 5). Defense counsel also asked the court to consider that Appellant was seventeen at the time of the crimes. (Tr. p. 928, lines 10–14). Appellant spoke on his own behalf, saying "I just, you know, I would like to apologize to the family for, you know, what happened." (Tr. p. 929, lines 12–13). Defense counsel then instructed Appellant not to "go further." (Tr. p. 929, line 14).

The trial judge ultimately sentenced Appellant to forty-five years imprisonment for murder, to forty-five years imprisonment for first degree burglary, to thirty years imprisonment for each of the attempted murder convictions, and to twenty years imprisonment for attempted armed robbery, which were all set to run concurrently. (Tr. p. 937, lines 5–18).

Standard of Review

The basic rule for an attack on a sentence in South Carolina was laid down in *State v. Conally*, 227 S.C. 507, 510, 88 S.E.2d 591, 593

> (1955), where [the South Carolina Supreme Court] stated "This Court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute, unless: (a) the statute itself violates the constitutional injunction, Article 1, Section 19, against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice, oppression, or corrupt motive."

Stockton v. Leeke, 269 S.C. 459, 461–62, 237 S.E.2d 896, 897 (1977). The burden of demonstrating that a sentence is cruel and unusual is on the person asserting the constitutional violation. *See id.* at 463, 237 S.E.2d 897 ("The presumption of validity extends to the statute in question here, and appellants must assume the heavy burden of persuading us that this penalty is without justification and is unconstitutionally severe.").

Analysis

Issue Preservation

Respondent submits that this issue has not been properly preserved for appellate review. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012) (citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). This same rule applies to constitutional issues, too. *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011). Here, defense counsel did not object to the trial court imposing a sentence without first holding an individualized sentencing hearing.[14] *See id.* (citing *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005)) ("[A] party must have a contemporaneous and specific objection to preserve an issue for appellate

[14] Respondent notes that the basis for Appellant's argument, the South Carolina Supreme Court's decision in *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), had not issued at the time of Appellant's trial, but the genesis for the *Aiken* opinion was the United States Supreme Court's decision in *Miller v. Alabama*, __ U.S. __, 132 S. Ct. 2455 (2012), which was decided before the time of Appellant's trial.

review."). Appellant never raised an Eighth Amendment challenge to his sentence.[15] As such, this issue has not been properly preserved.

Individualized Sentencing Hearing Was Not Warranted

In *Miller*, the United States Supreme Court held "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." 132 S. Ct. at 2469. The Court further determined that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 2475. In *Aiken*, our supreme court found it appropriate to extend the reasoning in *Miller* to all juveniles who receive life without parole sentences, even where the sentence was not mandatory. 410 S.C. at 543–45, 765 S.E.2d at 576–78. Appellant now encourages this Court to find that the forty-five year sentence that Appellant received is a *de facto* life sentence that entitles him to an individualized sentencing proceeding. Respondent disagrees.

A sentence of forty-five years is not a *de facto* life sentence for a seventeen-year-old.[16] Indeed, Appellant received only fifteen years more than the minimum sentence he

---

[15] Respondent also notes that Appellant does not appear to fall into any of the categories of individuals who could file a motion for resentencing under *Aiken* as Petitioner did not receive life without parole, nor was he facing such a sentence at the time *Aiken* issued since he had already received a sentence of forty-five years at that time. 410 S.C. at 545, 765 S.E.2d at 578 ("We hold the principles enunciated in *Miller v. Alabama* apply retroactively to these petitioners, to those similarly situated, and prospectively to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole. Accordingly, any individual affected by our holding may file a motion for resentencing within one year from the filing of this opinion in the court of general sessions where he or she was originally sentenced.").

[16] The cases that Appellant cites are not controlling. *See, e.g.*, *United States v. Garcia*, 754 F.3d 460, 473–74 (7th Cir. 2014) (finding a sixty year sentence reasonable though noting "a man of [defendant's] age is likely to perish in prison before the 60-year term expires"); *United States v. Pileggi*, 703 F.3d 675 (4th Cir. 2013) (noting a fifty year sentence for a forty-eight-year-old was "'a de facto life sentence'"); *State v. Null*, 836

could have received, and he was potentially facing two life sentences (for murder[17] and first degree burglary[18]) plus eighty years incarceration (for attempted armed robbery[19] and two counts of attempted murder[20]). The sentence that Appellant ultimately received was light in comparison to what he could have received. Even the life expectancy table referenced by Appellant indicates that at age seventeen, a male in South Carolina can be expected to live for 60.07 more years. S.C. Code Ann. § 19-1-150. A forty-five year sentence is not a *de facto* life sentence for a seventeen-year-old.

Additionally, the record reflects that the trial judge was well aware of Appellant's age and that the judge balanced that consideration with the senselessness of Appellant's crimes:

> It's tough to send a young man eighteen years of age away for a long time, but it's even tougher to allow someone with your lack of responsibility, your lack of any kind of respect for human life to remain associated with others in society who want to live their lives by the law. I have to protect them from people like you. So, I'm going to segregate you from society until you get old enough when hopefully you'll become a responsible citizen.

(Tr. p. 936, line 21–p. 937, line 4).

For all of the above reasons, Appellant is not entitled to the individualized resentencing hearing he now seeks.

N.W.2d 41, 70–73 (Iowa 2013) (finding a sentence of fifty-two and a half years "sufficient to trigger *Miller*-type protections").

[17] S.C. Code Ann. § 16-3-20(A).

[18] S.C. Code Ann. § 16-11-311(B).

[19] S.C. Code Ann. § 16-11-330(B).

[20] S.C. Code Ann. § 16-3-29.

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

KAYCIE S. TIMMONS
Assistant Attorney General
SC Bar No. 100237

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

DAN JOHNSON
Solicitor, Fifth Circuit

ATTORNEYS FOR RESPONDENT

Kaycie S. Timmons
ATTORNEY FOR RESPONDENT

August 5, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAURICE ALPHONSO ROBERTS, JR.,

APPELLANT,

Appellate Case No. 2014-000468.

PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record at:

Robert M. Dudek
Chief Appellate Defender
SCCID/Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This fifth day of August, 2015.

Kaycie S. Timmons

Kaycie S. Timmons
Assistant Attorney General
SC Bar No. 100237