STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2010-173668

THE STATE,

Respondent,

vs.

ARTRELL JABAR HICKSON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit

Post Office Drawer 3368
Aiken, SC 29802
(803) 642-1567

ATTORNEYS FOR RESPONDENT

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II.

The trial judge did not abuse his discretion in admitting a mug shot photograph taken of Appellant shortly after the bank robbery because there was a demonstrable need for the photograph, the photograph did not suggest Appellant had a prior criminal record, and no improper attention was called to the photograph's origin. Furthermore, the admission of the photograph resulted in no meaningful prejudice to Appellant.

III.

Any issue regarding the constitutionality of Appellant's sentence was not preserved for appellate review because Appellant raised no objection to his sentence on any basis during trial. Regardless, Appellant's aggregate twenty-eight-year sentence for armed robbery and possession of a firearm during the commission of a violent crime did not constitute cruel and unusual punishment in light of the grave nature of the Appellant's crimes.

IV.

The trial judge properly denied Appellant's directed verdict motion because the State presented both direct evidence and substantial circumstantial evidence from which the jury could find Appellant guilty of each element of the indicted offenses.

STATEMENT OF THE CASE

In June of 2009, Appellant Artrell Jabar Hickson and his brother, Javier Hickson, were arrested following an investigation into the armed robbery of the Graniteville branch of Security Federal Bank. In December of 2009, the Aiken County grand jury indicted Appellant and his brother for one count each of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Appellant and his brother for one count each of possession of a firearm during the commission of a violent crime. On September 20, 2010, a jury trial was commenced in the Aiken County court of general sessions with the Honorable Doyet A. Early, III, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant and his brother as indicted. The trial judge sentenced Appellant and his brother to concurrent terms of imprisonment of twenty-eight years for the armed robbery convictions and five years for the firearm convictions. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

Around noon on June 25, 2009, Gabrielle Hastings was working as a teller at the Graniteville branch of Security Federal Bank when she looked up and saw three gunmen wearing dark clothes, gloves, and bandanas over their faces enter the bank. (R. pp. 42-43; p. 53; pp. 56-57; pp. 90-91; p. 95; p. 112). After entering the bank, the first gunman approached the counter of Amanda Wood, another teller at the bank, knocked her envelopes into the floor, pointed a gun at her, and demanded money. (R. pp. 51-52). Wood gave the gunman, who was approximately 5'4" tall and was wearing a backpack, money from her cash drawer. (R. p. 52; p. 91). Meanwhile, the second gunman, who was also around 5'4" tall, approached the office of Tonya Key, the branch manager of the bank, and ordered her to open the vault. (R. p. 43; p. 52). Terrified, Key was too afraid to move and did not respond. (R. p. 43). The second gunman then left the offices and demanded money from Wood. (R. p. 52). Wood told him she already gave the money to the first gunman, so he moved to the next counter and took stacks of $1 bills, $5 bills, and $20 bills from Hastings at gunpoint. (R. p. 52; pp. 57-58). Throughout the robbery, the third gunman remained at the door and acted as a lookout for the others. (R. p. 51; p. 58; pp. 90-91).

Approximately two minutes after the robbery began, the three gunmen fled from the bank and ran towards a nearby wooded area.[1] (R. p. 43; p. 61). The bank employees then locked the door and triggered an alarm. (R. pp. 43-44; p. 57). Shortly thereafter, law enforcement officers responded to the bank, secured the scene, and obtained a description of the suspects from the terrified employees inside the bank. (R. pp. 60-61;

[1] During the robbery, the gunmen stole a total of $4,902 from the bank. (R. p. 123). The majority of the money was never recovered. (R. p. 123).

pp. 111-113). The bank employees informed the officers that the robbers were three black males wearing dark clothing, masks, and gloves. (R. pp. 111-112). Additionally, the bank employees described the suspects as approximately 5'4" tall. (R. p. 111). Subsequently, several bloodhound tracking teams were called to the scene and attempted to track the gunmen in the direction they fled after the robbery. (R. p. 64).

Officer Demetrick Drumming of the Aiken Public Safety Department and Lieutenant Clay Adams of the Aiken County Sheriff's Office followed the bloodhounds to a nearby church. (R. p. 67; p. 69; p. 96; p. 98). Next to the church, the officers discovered David Kearse hiding underneath a storage shed. (R. p. 70; pp. 96-97). The officers removed Kearse from underneath the shed and took him into custody. (R. p. 70; pp. 96-97). After arresting Kearse, the officers looked underneath the shed where Kearse had been hiding and discovered a semi-automatic pistol and a large wad of $5 bills hidden behind a cinder block.[2] (R. p. 71; p. 97; pp. 100-102; p. 108).

Meanwhile, Investigator Greg Savell of the Aiken County Sheriff's Office responded to the bank and obtained a copy of the surveillance footage of the robbery. (R. p. 100; p. 113). He then travelled to the location of Kearse's arrest and transported him to the Aiken County Detention Center. (R. pp. 133-114). After arriving at the detention center, Investigator Savell informed Kearse of his rights and interviewed him about the robbery. (R. pp. 114-115). Kearse admitted to committing the robbery and implicated Appellant Artrell Jabar Hickson and Appellant's brother, Javier Hickson ("Javier"), as his accomplices in the crime.[3] (R. pp. 115-116).

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[2] In total, Kearse was in possession of $290 comprised entirely of $5 bills at the time of his arrest. (R. p. 123). Notably, Kearse was also dressed in black. (R. p. 70).

[3] Kearse refused to provide a written statement because he was scared. (R. p. 117). However, he directed the officers to the location where he parted ways with Appellant and Javier after the robbery. (R. p. 117).

Subsequently, on June 30, 2009, Appellant and Javier were arrested in connection to the robbery of the Graniteville branch of Security Federal Bank.[4] (R. p. 122). Once they were taken into custody, officers took photographs of the men during the booking process. (R. pp. 79-80; p. 122). Thereafter, Appellant and Javier were each indicted for armed robbery and possession of a firearm during the commission of a violent crime, and the brothers proceeded to trial together. (R. p. 7; Indictments).

During trial, the bank employees recounted the circumstances of the bank robbery, and the responding officers testified about their investigation into the robbery leading up to the arrests of Kearse, Appellant, and Javier. (R. p. 42; pp. 50-51; p. 57; p. 70). Additionally, the surveillance footage of the robbery was played for the jury. (R. pp. 54-55). Subsequently, the solicitor informed the trial judge that he intended to introduce a photograph taken of Appellant after he was arrested for the robbery. (R. p. 79). The solicitor noted Appellant's appearance had changed since the photograph was taken and asserted Appellant's identifiable features displayed in the photograph could be used to identify Appellant as one of the gunmen when compared to the surveillance footage. (R. pp. 79-80). In response, defense counsel objected to the admission of the photograph and argued there was no demonstrable need for it since Appellant was available in the courtroom for comparative purposes. (R. p. 81). Defense counsel further claimed the photograph showed Appellant in a jail uniform. (R. pp. 82-83). Javier's defense counsel also objected, arguing the prejudicial nature of the photograph outweighed its probative value. (R. p. 83). Following the arguments of counsel, the trial judge ruled the photograph was admissible after determining there was a demonstrable need for it under the circumstances, it was not suggestive of a criminal record, and it was

[4] At the time of their arrests, Appellant was 5'4" tall and Javier was 5'6" tall. (R. p. 121).

relatively benign. (R. p. 84). However, the trial judge cautioned the solicitor to avoid calling attention to the photograph's origins. (R. p. 84).

Thereafter, during Investigator Savell's testimony, Investigator Savell reviewed several photographs taken from the surveillance footage of the robbery and noted one of the robbers had pronounced bushy eyebrows and appeared to fully fill the space of the hood covering his head. (R. pp. 118-119). The solicitor then introduced a photograph of Appellant taken on the day of Appellant's arrest five days after the robbery, and the photograph was admitted into evidence over objection.[5] (R. p. 122). No reference was made regarding why the photograph of Appellant was taken. (R. p. 122).

As the trial progressed, Sabrina Oakman, who was living with Kearse at the time of the robbery, testified about the events of June 25, 2009. (R. pp. 140-141). Oakman stated Kearse got up on the morning of the robbery, left the home, and then returned around 10:30 a.m. (R. p. 142). After returning home, Oakman testified Kearse asked her for a ride, and she drove him to Appellant and Javier's home. (R. pp. 142-143). Oakman stated she and Kearse picked up Javier and Appellant, who was wearing a black backpack, before driving to Kearse's grandmother's house, where Kearse retrieved something from his grandmother's backyard. (R. pp. 144-146). Oakman indicated the four then drove to a Wal-Mart where Javier's girlfriend and sister worked. (R. pp. 146-147). At the Wal-Mart, Oakman testified Javier went inside, returned a short time later, and followed them to Graniteville in another vehicle. (R. pp. 147-148). Oakman noted Kearse was in possession of a cell phone at the time even though he did not own one. (R. p. 148). After leaving the Wal-Mart, Oakman testified she dropped Appellant and Kearse

[5] In the photograph, Appellant's full head of hair and distinctive eyebrows and nose are clearly visible. (State's Ex. # 20). Additionally, Appellant is pictured wearing a white shirt underneath a blue or green shirt in the photograph. (State's Ex. # 20). Notably, it is not readily apparent that the clothing Appellant is wearing is prison-issued attire, and nothing visible on the clothing identifies it as such. (State's Ex. # 20).

off at Kalmia Apartments prior to 12:00 p.m. and then left.[6] (R. p. 150). Shortly after noon, Oakman stated she heard a phone ringing in her vehicle, found Javier's phone, and answered the call. (R. pp. 151-152). Oakman testified Kearse, who sounded mad and was breathing heavily, was the caller, and he asked her to pick him up at a church before the call ended.[7] (R. pp. 152-154). Oakman indicated she then returned to Kalmia Apartments and encountered Appellant and Javier's sister, Monique Hickson ("Monique"), Javier's girlfriend, Crystal Harris, and "Devon."[8] (R. pp. 154-156; p. 189). At the apartment complex, Oakman testified she got into an argument with Harris and was accused of failing to fulfill her responsibilities as the getaway driver. (R. pp. 155-156). Oakman stated she then left the apartments in an effort to find Kearse but was unable to do so. (R. p. 156).

Consistent with Oakman's testimony, Stanley Galloway, a guest at Kalmia Apartments, confirmed he saw Kearse, Appellant, and Javier at the apartment complex before lunchtime on June 25, 2009. (R. pp. 179-180). Likewise, Beatrix Wright acknowledged she told investigators she saw Appellant, Javier, and Kearse at the apartment complex on the morning of the robbery. (R. pp. 187-188). Additionally, Candice Bryant, Wright's cousin, testified she saw Kearse, Appellant, and Javier outside of Wright's apartment prior to the robbery.[9] (R. p. 185; pp. 192-193).

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[6] Notably, Kalmia Apartments was located only a few blocks away from the Graniteville branch of Security Federal Bank. (R. p. 114).

[7] Kearse called Javier's phone using Appellant's cell phone. (R. pp. 151-153). The caller I.D. on Javier's phone identified the caller as "My Bro." (R. p. 152).

[8] Significantly, Harris and Monique were supposed to be working at the Wal-Mart at that time. (R. pp. 175-176). However, the two unexpectedly left work at 12:55 p.m. that day, and their absences were unexcused. (R. pp. 175-177).

[9] At the outset of her testimony, Bryant noted she received a text message on the preceding night stating: "What are you at the courthouse snitching?" (R. p. 192).

On cross-examination, defense counsel questioned Bryant about a portion of her statement to law enforcement officers, and Bryant's statement was marked for identification purposes. (R. pp. 194-195). Thereafter, the solicitor asked Bryant to read her entire statement to the jury, and defense counsel for both Appellant and Javier objected, arguing it contained inadmissible hearsay. (R. p. 197). The trial judge then asserted Appellant already introduced the statement before permitting Bryant to read her statement to the jury.[10] (R. p. 197). Bryant then read the following statement:

> On the day of the robbery at Security Federal Graniteville Artrell Hickson, Javier Hickson, and David Kearse came to my cousin's Beatrix Wright's apartment. They were in a white Ford Focus. A dark skinned girl was driving. She worked – she – it was thought that she worked at Walmart on the south side. They were talking to Beatrix's boyfriend Stanley. After a while, they left. Stanley remained. Me and Beatrix took Stanley home to New Ellenton. We came back and saw the police who told us the bank had been robbed. Sabrina Oakman drove her black Tahoe and asked if Stanley knew where David was. We told her we had taken him to New Ellenton. Big Phil and Devon were at Kalmia Apartments saying, Them boys done robbed the bank I think. I saw a white Ford Focus. Phil and Devon were at the entrance to Kalmia Apartments. Sabrina kept calling Artrell's cellphone because David had it because Big Phil said David had the phone. Sabrina kept saying, David is in a storage in the woods. Sabrina was crying and said she was here to find him and pick him up. Sabrina and Artrell – Sabrina, Artrell, and Javier along with Devon. Beatrix told me that Artrell, Javier, and David were trying to get Stanley to rob the bank with them. Beatrix said Stanley told me this. Artrell dated a girl at Walmart on the south side. The girl was thought to be in the white Ford Focus.

(R. pp. 198-199). Wright identified "Big Phil" as Phillip Paul and "Devon" as Devon Jones. (R. p. 199).

Following Wright's testimony, Randy Wilson testified about his knowledge of the robbery of the Graniteville branch of the Security Federal Bank. (R. pp. 201-202). At the outset of his testimony, Wilson noted he robbed a different bank on July 1, 2009, with

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[10] Near the end of trial, the court reporter confirmed Appellant did not introduce any exhibits during trial. (R. p. 258).

Paul and Jelani Edwards, and was arrested.[11] (R. p. 201). After he was arrested, Wilson confirmed he implicated Appellant and Javier in the robbery on June 25, 2009. (R. pp. 202-203). Wilson stated he met with Paul, Edwards, Appellant, and Javier on June 24, 2009, to discuss the robbery that was to occur the next day. (R. pp. 203-204). During the meeting, Wilson testified they determined which bank was going to be robbed and who was going to commit the crime. (R. pp. 204-205). Wilson stated they decided Appellant, Javier, and Kearse were going to commit the crime, and Paul was going to supply the firearms.[12] (R. pp. 204-205). Wilson indicated Kearse's girlfriend was supposed to drop the robbers off before the crime and "Von" was going to drive them away afterwards. (R. p. 207). Subsequently, on the day of the robbery, Wilson stated he was at home with Paul and Edwards when Edwards' phone rang. (R. p. 207). Wilson testified Edwards answer the call and he overheard Appellant state they were "hemmed up" in Graniteville. (R. p. 208). Wilson stated Edwards and Paul then left in Edwards' vehicle.[13] (R. p. 208).

Subsequently, David Kearse testified about his involvement in the robbery of the Graniteville branch of Security Federal Bank. (R. p. 219). Kearse stated they began planning to rob the bank a week before the crime occurred, and the initial discussion regarding the robbery involved Appellant, Edwards, and Kearse. (R. p. 222). Later that week, Kearse testified he met with Appellant, Javier, and Paul to further discuss the robbery. (R. pp. 223-224). During the second meeting, Kearse testified they planned when they were going to commit the crime and what they were going to wear. (R. p.

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[11] At the time of trial, Wilson was serving a sentence for armed robbery. (R. p. 203). Wilson testified he hoped to have his sentence reduced after testifying during Appellant and Javier's trial. (R. p. 212).

[12] Wilson testified Appellant asked Paul to let him use an AK-47 during the robbery, but Paul declined to give it to Appellant. (R. pp. 205-206).

[13] Around 3:30 p.m. on the day of the robbery, Investigator James Criscillis of the Aiken County Sheriff's Office observed Edwards and Paul travelling in Edwards' vehicle near the bank. (R. p. 214; pp. 216-217).

224). Following that meeting, Kearse, Javier, and Appellant initially agreed to commit the robbery on June 24, 2009. (R. p. 225). However, on the day of the planned robbery, Kearse stated they drove by the bank and decided to wait. (R. p. 226). Then, on the next day, Kearse testified he asked Oakman to drive him to Appellant and Javier's house and they picked up Appellant and Javier. (R. pp. 228-229). Kearse stated they then went to his grandmother's house and picked up some gloves before driving to Wal-Mart. (R. pp. 229-230). At the Wal-Mart, Kearse indicated Javier borrowed his girlfriend's car, and they then all drove to Kalmia Apartments in Graniteville. (R. pp. 230-231). At the apartment complex, Kearse stated they changed into black clothes and retrieved their guns from Appellant's backpack. (R. pp. 233). They then met with Jones, who was supposed to be the getaway driver, and rode with Jones to the bank. (R. p. 232; p. 234). Kearse stated they went into the bank, committed the robbery, and came back outside. (R. pp. 234-235). Once outside, Kearse testified Jones was nowhere to be found, so they fled to a nearby wooded area. (R. pp. 235-236). Kearse stated they then split up and he called Oakman on Appellant's phone. (R. pp. 237-238). Kearse testified he was later arrested while hiding under a shed and implicated Appellant and Javier in the crime. (R. p. 238). Kearse then identified Appellant and Javier in the surveillance photographs of the robbery. (R. p. 239).

Subsequently, the State rested its case, and defense counsel moved for a directed verdict, arguing no "credible evidence" linking Appellant to the crime had been presented. (R. p. 252). The trial judge denied the motion. (R. p. 252). Thereafter, during closing arguments, the solicitor noted Appellant's eyebrows, nose, and amount of hair matched the same features of one of the robbers visible in the surveillance photographs. (R. pp. 267-268). The solicitor further argued Bryant's statement was

important in placing Appellant and Javier at the apartment complex prior to the robbery. (R. p. 279). However, the solicitor did not reference or emphasize any of the challenged portions of Bryant's statement in his argument to the jury. (R. pp. 279-280). Thereafter, at the conclusion of trial, Appellant was convicted as indicted. (R. pp. 321-322). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty-eight years.[14] (R. p. 326).

[14] Javier was also convicted as indicted and received an identical sentence. (R. pp. 321-322; p. 326).

ARGUMENT

I.

To the extent the trial judge erred in admitting two hearsay portions of a witness' statement during trial, any error was harmless in light of the isolated nature of the hearsay evidence, the context in which the hearsay evidence was presented to the jury, and the other overwhelming evidence of Appellant's guilt presented during trial, which included the uncontradicted testimony of Appellant's accomplice in the bank robbery directly implicating him in the crime.

Appellant asserts the trial judge erred in allowing a witness to read her statement to law enforcement during trial because portions of the statement constituted improper hearsay evidence. Appellant maintains the hearsay evidence was unduly prejudicial because it directly implicated him in the bank robbery. To the extent the trial judge erred in admitting the two challenged hearsay portions of the witness' statement, any error in the admission of that evidence was harmless under the circumstances of Appellant's case. Significantly, the challenged comments were only mentioned a single time during trial, clearly conveyed to the jury that the witness and the people the original statements were attributed to had no actual first-hand knowledge of the accuracy or truthfulness of the comments, and were never repeated or discussed during the remainder of trial. Furthermore, substantial other competent evidence of Appellant's guilt was presented during trial, including the testimony of his accomplice in the robbery directly implicating him in the crime. Accordingly, when viewing the challenged hearsay evidence in the proper context and in light of the insignificance of the hearsay evidence in relation to other competent evidence conclusively establishing Appellant's guilt, any error in the admission of the hearsay evidence was harmless and did not warrant a reversal of Appellant's convictions. Appellant's convictions should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "The general rule is that hearsay is not admissible." State v. Ladner, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007); see Rule 802, SCRE ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute."). The rationale for excluding hearsay evidence is that such evidence denies the adverse party an opportunity to cross-examine the declarant of the hearsay statement. State v. Mitchell, 286 S.E.2d 572, 573, 336 S.E.2d 150, 150-151 (1985); see State v. James, 255 S.C. 365, 370, 179 S.E.2d 41, 43 (1971) ("The hearsay rule signifies a rule rejecting assertions offered testimonially which have not been in some way subjected to the test of cross-examination.").

However, even if improper hearsay evidence is admitted, any error in the admission of the hearsay evidence is subject to a harmless error analysis and only warrants reversal if it results in actual prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006). 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). 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); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "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).

In the case at bar, certain portions of Bryant's statement to law enforcement consisted of statements not attributable to Bryant herself. To the extent those portion of Bryant's statement constituted inadmissible hearsay, they should not have been introduced during trial. However, viewing the challenged portions of Bryant's statement in the proper context and in relation to the other evidence presented during trial, any error in the admission of the hearsay portions of the statement was harmless and did not

warrant a reversal of Appellant's convictions. See State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal.").

In the first challenged portion of Bryant's statement, Bryant recounted: "[Paul] and [Jones] were at Kalmia Apartments saying, Them boys done robbed the bank I think." Notably, Appellant and his brother were not specifically referenced in the challenged comment, and the comment itself was highly vague. Therefore, it is uncertain if the jury actually understood it to be a reference to Appellant. Cf. State v. Chisholm, 395 S.C. 259, 274, 717 S.E.2d 614, 622 (Ct. App. 2011) (finding any error in the admission of hearsay evidence to be harmless where the improper hearsay comment was fleeting, it was unclear if the jury understood the comment to be a reference to Chisholm, and Chisholm was identified as the perpetrator of the crime through the testimony of two other witnesses). However, assuming the comment suggested Paul and Jones were referring to Appellant and his brother as "them boys," the comment established Paul and Jones only thought Appellant committed the crime and did not have any actual first-hand knowledge of what occurred.[15] Thus, the jury was aware the comment was hearsay and was not made by someone with any direct knowledge of who committed the robbery, which minimized any prejudice that could have resulted from the comment. Cf. State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) (finding the improper admission of hearsay evidence to be harmless where the hearsay evidence was impeached by the jury's exposure to the fact the evidence was not based on any first-hand knowledge). Furthermore, the comment was never mentioned again during the remainder of trial, and

[15] Tellingly, Kearse and Wilson later testified Paul and Jones were involved in the planning of and execution of the bank robbery, which might have explained why they thought "them boys" committed the robbery. (R. pp. 203-205; p. 207; p. 224; p. 232).

the solicitor made no reference to it during his closing argument.[16] For these reasons, the first challenged portion of Bryant's statement, which was isolated, vague, unspecific, and uncertain, was not sufficiently prejudicial to warrant a reversal of Appellant's convictions.

In the other challenged portion of Bryant's statement, Bryant asserted: "Beatrix told me that [Appellant], Javier, and [Kearse] were trying to get [Galloway] to rob the bank with them. [Wright] said [Galloway] told me this." Initially, Wright, who relayed Galloway's alleged comment to Bryant, and Galloway, who allegedly made the comment to Wright, both testified during trial and were available for cross-examination.[17] Because both Wright and Galloway could be questioned about their alleged statements and because neither corroborated the statement during their trial testimony, the admission of the challenged comment was harmless under the circumstances. See, e.g., State v. Huggins, 275 S.C. 229, 231, 269 S.E.2d 334, 335 (1980) (finding any error in the admission of a hearsay statement to be harmless where the declarant of the statement testified at trial and was available for cross-examination). Additionally, based on the nature of the comment, the jury was fully aware Bryant had no actual knowledge about the substance of Appellant's conversation with Galloway, no first-hand knowledge that Appellant actually asked Galloway to participate in the robbery, and was, instead, relaying what another person claimed Galloway said to her. Because the jury was completely aware of the hearsay nature of the comment, any potential for prejudice was greatly diminished. See Price, 368 S.C. at 499, 629 S.E.2d at 366 ("Defense counsel

[16] Significantly, the physical copy of Bryant's statement was **not** introduced into evidence during trial and was **not** available to the jury during their deliberations. (R. p. 258).

[17] Notably, during trial, Galloway acknowledged he spoke with Appellant and his brother on the day of the robbery, but he merely testified they asked him for a cigar. (R. p. 181).

impeached Richardson's improper testimony by eliciting that his information was solely based on information from informants."). Furthermore, the comment was never repeated during trial, and the solicitor made no reference to it during his closing argument. See Chisholm, 395 S.C. at 274, 717 S.E.2d at 622 (considering the fleeting nature of a hearsay statement in concluding the statement was harmless). Specifically, the solicitor argued to the jury: "I submit to you that the crux of [Bryant's] testimony, the thrust of her testimony – the statement that she gave in March of 2010 I saw them there." (R. p. 279). Thus, the solicitor did **not** have Bryant read her statement to law enforcement during trial to prove Paul and James knew Appellant committed the bank robbery or to prove Appellant asked Galloway to participate in the crime. Instead, the statement was solely offered to prove Bryant saw Appellant at the apartment complex before the robbery. See State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) ("It is well settled that evidence is not hearsay unless offered to prove the truth of the matter asserted."). Therefore, under the circumstances, the other challenged portion of Bryant's statement was, likewise, not sufficiently prejudicial to warrant a reversal of Appellant's convictions. See Id. ("[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice.").

Considering the isolated nature of the challenged comments along with the fact the jury was fully aware Bryant had no actual knowledge regarding the truthfulness of those comments, any error in the admission of the comments did not warrant a reversal of Appellant's convictions. However, even if the challenged comments were sufficiently prejudicial to warrant reversal when considered in isolation, any error in the admission of comments was harmless when considering those comments in conjunction with the other overwhelming evidence of Appellant's guilt presented during trial.

Most significally, Appellant's accomplice, Kearse, confessed to committing the robbery just hours after the crime and identified Appellant and Javier as his accomplices. Kearse further identified Appellant as one of the robbers from the surveillance footage of the robbery and testified about Appellant's role in the crime. Cf. State v. Evans, 378 S.C. 296, 300-301, 662 S.E.2d 489, 491 (Ct. App. 2008) (finding any error in the admission of improper hearsay during Evan's trial for possession of a stolen vehicle to be harmless where other competent evidence was presented during trial establishing Evans' guilt, including eyewitness testimony placing Evans in possession of the stolen vehicle). Kearse's uncontradicted testimony directly implicating Appellant in the bank robbery constituted competent and compelling evidence of Appellant's guilt. See, e.g., State v. Key, 256 S.C. 90, 97, 180 S.E.2d 888, 891 (1971) ("The jury had before it positive identifications of each of the defendants. Such identifications were not denied. It is academic that failure of the defendants to testify created no inference of guilt against them. They did not have the burden of proving anything. However, undisputed testimony is more conclusive than testimony which is in dispute, and it is less difficult for this court to reason that guilt is conclusively proven when there is no denial, than when an accused person disputes the truthfulness of the State's evidence.").

In addition to Kearse's testimony, Investigator Savell confirmed Kearse confessed to the robbery and immediately identified Appellant and Javier as his accomplices in the crime. Additionally, Oakman corroborated Kearse's testimony about what occurred before the robbery and testified she accompanied Kearse, Appellant, and Javier to Kalmia Apartments in Graniteville shortly before the bank, which was only a short distance

away, was robbed.[18] Oakman additionally testified Kearse called her after the crime on Appellant's phone and asked for a ride away from the area. Substantiating Oakman's testimony, several other witnesses confirmed Kearse, Appellant, and Javier were all at the apartment complex near the bank prior to the robbery. Also, Appellant's co-conspirator, Wilson, testified Appellant participated in the planning of the bank robbery, and Wilson further stated he overheard Appellant call two other known bank robbers on the day of the robbery to notify them he was "hemmed up" in Graniteville. Furthermore, in addition to the testimony of the witnesses establishing Appellant's whereabouts on the day of the bank robbery along with his role in the crime, other evidence and testimony was presented during trial establishing Appellant was the same height as the one of the robbers and shared many of the same physical features as one of the robbers captured on the surveillance footage.[19]

Considering the challenged hearsay comments in the proper context and in relation to the other overwhelming evidence of guilt, any error in the admission of the hearsay testimony was harmless. In light of the fact Appellant was identified as one of the robbers through the testimony of multiple witnesses, including his accomplice in the bank robbery, the admission of the challenged evidence, which consisted of an isolated comment that two men at the apartment complex thought "them boys" committed the robbery along with an isolated comment that was not corroborated by the testifying witnesses who allegedly made it, could not have impacted the jury's verdict. Compare

[18] Oakman also testified Appellant was in possession of a black backpack when she picked him up at his home before the robbery. (R. p. 145). One of the robbers was wearing a black backpack in the surveillance footage, and Kearse identified the backpack as belonging to Appellant. (R. p. 240).

[19] Specifically, the bank employees testified two of the gunmen were approximately 5'4" tall. (R. p. 42; p. 45; p. 53). Thereafter, Investigator Savell confirmed Appellant was 5'4" tall and Javier was 5'6" tall. (R. p. 121). Additionally, Appellant's features and appearance, including his eyebrows, nose, and hair, matched the features and appearance of one of the robbers depicted in the surveillance footage. (State's Ex. # 17; State's Ex. # 20).

Chisholm, 395 S.C. at 274 (finding the admission of hearsay to be harmless where Chisholm was identified as the perpetrator of the crime by two other witnesses); and Key, 256 S.C. at 91, 180 S.E.2d at 891 (finding any error in the admission of hearsay evidence to be harmless where Key was identified by a witness as one of the robbers during trial and his co-defendant was identified as one of the robbers by two witnesses during trial, including by one witness who only identified him by voice); with Byers, 392 S.C. at 448, 710 S.E.2d at 60 (finding the admission of hearsay **not** to be harmless where Byers' other accomplices did **not** directly state Byers was in the car at the time of the robbery and the other evidence, which included an alibi, did not establish Byers' guilt for the robbery). Notwithstanding the challenged hearsay statements, which were isolated, vague, and not further explored during trial, abundant other evidence was presented conclusively establishing Appellant's guilt. See Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (finding the admission of improper hearsay evidence to be harmless where "there was abundant evidence in the record from which the jury could have found appellant guilty, notwithstanding the hearsay testimony"). Therefore, to the extent the trial judge erred in admitting the two isolated hearsay statements, any error was harmless and did not warrant a reversal of Appellant's convictions. See Wyatt, 317 S.C. at 372, 453 S.E.2d at 891 ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal."). Appellant's convictions should be affirmed.

II.

The trial judge did not abuse his discretion in admitting a mug shot photograph taken of Appellant shortly after the bank robbery because there was a demonstrable need for the photograph, the photograph did not suggest Appellant had a prior criminal record, and no improper attention was called to the photograph's origin. Furthermore, the admission of the photograph resulted in no meaningful prejudice to Appellant.

Appellant contends the trial judge committed reversible error by permitting the State to introduce a mug shot photograph of Appellant taken after he was arrested for the bank robbery. Appellant maintains there was no demonstrable need for the photograph because he was present in the courtroom for comparative purposes and his accomplices identified him as one of the robbers. However, contrary to Appellant's assertions, there was a demonstrable need for the photograph because it enabled the jury to compare Appellant's features and appearance only days after the crime to the features and appearances of the robbers depicted in the surveillance footage of the crime. Significantly, the jury was unable to make such a comparison without the photograph because Appellant altered his appearance prior to trial. Furthermore, the photograph did not suggest Appellant had a prior criminal record, and no improper attention was called to the photograph's origin. For these reasons, the trial judge did not abuse his discretion in admitting the photograph into evidence during trial. However, even if the trial judge did err in admitting the photograph, Appellant was not entitled to a reversal of his convictions because the photograph's admission resulted in no meaningful prejudice to Appellant. Appellant's convictions should be affirmed.

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). A trial judge's ruling on the admission or exclusion of evidence will not be

reversed on appeal unless that ruling constituted "a **manifest abuse of discretion** accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) (emphasis added). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." Byers, 392 S.C. at 444, 710 S.E.2d at 58. On appeal, an appellate court will give "great deference" to the trial judge when reviewing a ruling on the admissibility of evidence. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010).

The admission of a mug shot photograph of a defendant during trial constitutes reversible error unless: (1) there is a demonstrable need to introduce the photograph; (2) the photograph does not suggest the defendant has a criminal record; and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication. State v. Traylor, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004). The rationale behind the rule prohibiting the admission of mug shots unless specific criteria are met is "that such photos are prejudicial because they imply a defendant's prior bad acts." Id. at 84-85, n.12, 600 S.E.2d at 528.

In Appellant's case, the trial judge did not abuse his discretion in admitting the photograph of Appellant taken after he was arrested for the bank robbery. Initially, there was a demonstrable need for the photograph to be admitted during trial. Prior to trial, Appellant altered his appearance and had a different hair style than he did at the time of the crime. Notably, one of the robbers appeared to have a large amount of hair at the time of the robbery, which fully filled the hood he wore in an effort to conceal his identity, and Appellant had a similarly large amount of hair at the time of his arrest only days after the robbery was committed. Subsequently, Appellant's hair was much shorter

at the time of trial due to the changes he made to it.[20] Therefore, without the photograph, the jury would have been unable to accurately compare Appellant's hair as it appeared in the courtroom to the hair of the robbers depicted in the surveillance footage. Because the photograph allowed the jury to compare Appellant's hair and distinctive features just five days after the crime to the same features of the robbers shown in the surveillance footage, Appellant's mug shot was necessary to allow the jury to properly determine if Appellant was one of the perpetrators of the crime.

Additionally, the photograph of Appellant did not suggest Appellant had a criminal record. The photograph, which was a picture of Appellant's head and shoulders with Appellant facing forward, depicted Appellant wearing a white shirt underneath a blue or green shirt. (State's Ex. # 20). Nothing in the photograph suggested Appellant was dressed in prison attire, and nothing in the photograph indicated it was taken by law enforcement officers. Most importantly, the photograph contained nothing indicating Appellant had a prior criminal record. See State v. Robinson, 274 S.C. 198, 201, 262 S.E.2d 729, 730 (1980) ("While the photographs are police 'mug shots,' there was nothing on the face of the pictures which would indicate that Robinson had a prior criminal record."). Therefore, because the photograph did not suggest Appellant committed any prior bad acts aside from the bank robbery, the rationale typically justifying the exclusion of mug shot photographs did not apply to the photograph in Appellant's case. Cf. State v. Denson, 269 S.C. 407, 412-413, 237 S.E.2d 761, 764 (1977) ("[T]he photographs did not imply that appellant had a prior criminal record. The photographs were not the juxtaposed full face and profile photographic display normally

[20] The solicitor noted Appellant's hair was longer at the time of the crime, but the solicitor described Appellant's hair at the time of trial as "high and tight." (R. p. 70; p. 268). Appellant's hair in the photograph taken shortly after his arrest was long and cannot reasonably be described as "high and tight." (State's Ex. # 20).

associated with 'mug shots.' Neither did the appearance of the words 'Richland County' on one of the photographs inform the jury that appellant had a prior criminal record.").

Finally, the photograph was not introduced in such a way as to call attention to it origin or to any negative implications. During trial, testimony was offered establishing the photograph showed Appellant's appearance five days after the crime occurred, which was the same day as his arrest. However, no testimony was specifically presented regarding why the photograph was taken or how it was taken. Therefore, no improper attention was called to the origin of the photograph, and the testimony associated with the photograph did not create any negative implications about its existence. Cf. Robinson, 274 S.C. at 201, 262 S.E.2d at 730 ("The jury could just have easily inferred that the photograph was the result of the investigation of the murder. Since there was nothing to draw particular attention to the source or implications of the photograph, its admission was proper."); Denson, 269 S.C. at 413, 237 S.E.2d at 764 ("[T]here is no intimation in the record that the admission of the photographs in any way focused the jury's attention on the source of the pictures. The jury was told at one point in the trial that the photographs came from the files of the Richland County's Police Department and the Columbia Police Department, but this testimony only explained the source of the photographs, it did not 'draw particular attention to the source or implications of the photographs.' " (citations omitted)).

Because there was a demonstrable need for the photograph, the photograph did not suggest Appellant had a criminal record, and no improper attention was called to the photograph's origin, the trial judge did not commit a manifest abuse of discretion in admitting the photograph during trial. Cf. State v. Ford, 334 S.C. 444, 450, 513 S.E.2d 385, 388 (Ct. App. 1999) ("[T]he lineup was admissible because the state had a

demonstrable need to introduce the photos and because there was nothing about the photographs or the way they were introduced that suggested Ford had a prior criminal record."). However, even assuming the photograph was somehow improperly admitted, Appellant suffered no meaningful prejudice from its admission.[21] As the trial judge noted, the photograph was largely benign and merely depicted a frontal shot of Appellant's head and shoulders. Critically, the photograph in no way suggested Appellant had a prior criminal record or had been arrested in connection with any crime other than the bank robbery. Cf. Traylor, 360 S.C. at 84, 600 S.E.2d at 528 (holding Traylor suffered no prejudice as a result of the admission of a booking photograph where the testimony established the photograph of Traylor was taken upon his arrest and the photograph was explained in such a manner that it did not imply Taylor committed a prior bad act). Therefore, because no prejudice resulted from the admission of the photograph, any error in its admission did not warrant reversal. See State v. Crocker, 366 S.C. 394, 408, 621 S.E.2d 890, 897 (Ct. App. 2005) ("To warrant reversal, an appellant must show both error and resulting prejudice."). The trial judge did not abuse his discretion in admitting the photograph of Appellant taken only five days after the bank robbery, and Appellant suffered no prejudice from the admission of the photograph. Appellant's convictions should be affirmed.

[21] On appeal, Appellant contends the photograph was prejudicial because the only evidence directly implicating him in the crime was "questionable" testimony from admitted criminals. Although the evidence against Appellant consisted of much more than the testimony of his accomplices, Appellant's appellate argument demonstrates exactly why there was a demonstrable need for the photograph since it enabled the jury to compare Appellant's features around the time of the crime to the features of the perpetrators of the robbery depicted in the surveillance footage and since it corroborated Appellant's accomplices' "questionable" testimony identifying Appellant as one of the robbers. See, e.g., State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996) ("If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it."). Therefore, the trial judge did not abuse his discretion in admitting the photograph during trial.

III.

Any issue regarding the constitutionality of Appellant's sentence was not preserved for appellate review because Appellant raised no objection to his sentence on any basis during trial. Regardless, Appellant's aggregate twenty-eight-year sentence for armed robbery and possession of a firearm during the commission of a violent crime did not constitute cruel and unusual punishment in light of the grave nature of the Appellant's crimes.

Appellant asserts his twenty-eight-year sentence for armed robbery and possession of a firearm during the commission of a violent crime constituted cruel and unusual punishment. Appellant maintains his allegedly unconstitutional sentence must be reversed or reduced in light of several mitigating circumstances, including his young age and lack of a prior criminal record. Initially, any issue with the constitutionality of Appellant's sentence is not preserved for appellate review because Appellant did not raise any objection to his sentence during trial and, thus, was precluded from raising any objection to his sentence for the first time on appeal. Furthermore, contrary to Appellant's appellate contentions, Appellant's sentence was not grossly disproportionate to his offenses and did not constitute cruel and unusual punishment. Based on the highly serious nature of Appellant's crimes coupled with the aggravated circumstances of those crimes, the trial judge properly exercised his discretion in imposing a substantial sentence falling within the appropriate statutory sentencing limits. Accordingly, there is no basis to disturb Appellant's sentence on appeal, and Appellant's sentence did not violate the constitutional prohibition against cruel and unusual punishment. Appellant's convictions and sentence should be affirmed.

A. Issue Preservation

In order to properly preserve an issue for appellate review, a defendant must make a contemporaneous objection to a perceived error during trial. State v. Blalock, 357 S.C.

74, 79, 591 S.E.2d 632, 635 (Ct. App. 2003); see In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review."). If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). The appellate court will not consider any issues that were not presented to or passed upon by the trial judge. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000).

In the case sub judice, any issue with Appellant's sentence was not preserved for appellate review. Following the imposition of Appellant's sentence, Appellant did not raise any objection to the trial judge in regards to his sentence and never alleged his particular sentence constituted cruel and unusual punishment. See State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review."). Therefore, because Appellant failed to raise any objection to his sentence to the trial judge, Appellant cannot raise an issue with the propriety of his sentence for the first time to the appellate court. See State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) ("No objection to sentencing was raised at trial and this issue is not properly before the court."); State v. Winestock, 271 S.C. 473, 475, 248 S.E.2d 307, 308 (1978) ("[A]ppellant's failure to timely object to or seek modification of his sentence in the lower court precludes him from presenting the question to this Court for the first time on appeal."); see also State v.

Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."). Appellant's convictions and sentence should be affirmed.

B. Propriety of the Sentence

The trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limits prescribed by statute." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Notwithstanding a trial judge's authority to impose a sentence falling within the statutory limits, the Eighth Amendment of the United States Constitution prohibits the imposition of cruel and unusual punishment. U.S. Const. amend. VIII. However, the Eighth Amendment only forbids extreme sentences that are grossly disproportionate to the crime. Harmelin v. Michigan, 501 U.S. 957, 1001 (1991). What constitutes cruel and unusual punishment is an evolving standard and involves looking to how society presently views a particular punishment. State v. Wilson, 306 S.C. 498, 509-510, 413 S.E.2d 19, 26 (1992); see Trops v. Dulles, 356 U.S. 86, 101 (1958) ("The Amendment must draw its meaning from the evolving standards of decency that mark the progress of

a maturing society."). Furthermore, in addition to complying with the evolving standard of decency, a particular sentence must be proportionate to the crime committed. See Atkins v. Virginia, 536 U.S. 304, 311 (2002) (instructing that it is a precept of justice that punishment for a crime should be graduated and proportioned to the offense).

The clearest and most reliable expression of society's contemporary values is derived from legislation enacted by the country's legislatures. State v. Pittman, 373 S.C. 527, 563, 647 S.E.2d 144, 162 (2007). However, a reviewing court's own judgment should also be employed by asking whether there is reason to disagree with the judgment reached by the citizenry and the legislature. Id. at 563, 647 S.E.2d at 163. In order to establish that evolving standards of decency preclude a particular punishment, the defendant bears the heavy burden of showing our culture and laws have emphatically and virtually universally rejected a particular sentencing practice. Id. at 565, 647 S.E.2d at 164. "It is not the burden of the state to establish a national consensus approving what their citizens have voted to do; rather, it is the heavy burden of the defendant to establish a national consensus against it." State v. Williams, 380 S.C. 336, 347, 669 S.E.2d 640, 646 (Ct. App. 2008).

In the case at bar, Appellant contends his twenty-eight-year sentence constituted cruel and unusual punishment in light of his lack of a prior criminal record, his young age, and other mitigating circumstances. However, Appellant readily concedes his sentence fell below the maximum permissible sentencing limits for his crimes. Based on the nature of Appellant's crimes coupled with the fact the trial judge did not exceed the legislatively-mandated sentencing limits in imposing Appellant's sentence, Appellant's twenty-eight-year sentence did not constitute cruel and unusual punishment under the circumstances.

Appellant was convicted of armed robbery and possession of a weapon during the commission of a violent crime. Following a conviction for those crimes, the legislature authorized the imposition of a sentence of ten to thirty years for armed robbery and up to five years for the firearm offense. See S.C. Code Ann. § 16-11-330(A) ("[U]pon conviction [for armed robbery], [a person] must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence."); S.C. Code Ann. § 16-23-490 (authorizing the imposition of a five-year sentence for possessing or visibly displaying a firearm during the commission of a violent crime). Thus, Appellant was facing a potential term of incarceration of thirty-five years for his crimes.

Unquestionably, Appellant committed an extremely serious and grave offense by taking part in an armed robbery of a bank, and his crimes warranted the imposition of a substantial sentence. See State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) ("[F]ew would argue that first-degree burglary, armed robbery, and kidnapping are anything other than grave offenses of the 'most serious' nature."). Beyond the grave nature of armed robbery itself, Appellant's crimes were aggravated because the evidence established Appellant carefully planned his crimes with his accomplices, took steps to conceal his involvement in the offenses by covering his face and wearing gloves, and terrorized the employees of the bank by pointing a firearm at them during the commission of the robbery. Appellant's crimes were violent and premeditated and placed the lives of his victims at risk. Based on the highly serious nature of armed robbery coupled with the aggravating circumstances unique to Appellant's crimes, Appellant's criminal actions justified the imposition of a sentence in

excess of the mandatory minimum permitted under the law. The twenty-eight-year sentence imposed by the trial judge was not grossly excessive or disproportionate to the serious nature of Appellant's crimes. Therefore, Appellant's sentence did not constitute cruel and unusual punishment. Cf. State v. Scates, 212 S.C. 150, 155-156, 46 S.E.2d 693, 695 (1948) (finding the trial judge did not abuse his discretion or impose an unconstitutional sentence when he sentenced the twenty-one-year-old defendant to the maximum twenty-five-year sentence permitted for armed robbery at the time)

Notably, Appellant has not contended the sentencing range authorized by South Carolina's armed robbery statute itself is unconstitutional, and Appellant has not suggested his own sentence was the result of partiality, prejudice, or corrupt motive. Instead, Appellant contends his young age, lack of a prior criminal record, desire to obtain a G.E.D., and role as a father required the trial judge to impose a less substantial sentence for the extremely serious crimes. However, because Appellant's challenge to his sentence focuses entirely on the alleged unconstitutional excessiveness of his particular sentence and not on the constitutionality of the statutorily-authorized sentencing ranges for his crimes, there is no appropriate basis upon which Appellant's sentence can be disturbed on appeal. See Wood v. State, 257 S.C. 179, 182, 184 S.E.2d 702, 703 (1971) ("The charge of unconstitutionality is addressed only to the sentence, not to the statute under which the same was imposed. It is well settled in this State that 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, Sec. 10, against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice or pressure or corrupt motive."); see also State v. Conally, 227 S.C. 507, 510, 88 S.E.2d 591, 593 (1955) ("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 . . . against cruel and unusual punishment, or (b) the sentence is the result of partiality, prejudice, oppression, or corrupt motive.").

Appellant was sentenced to a term of imprisonment falling within the appropriate statutorily-defined sentencing limits for his highly serious crimes. Based on the highly serious nature of his crimes, the trial judge imposed a substantial twenty-eight-year sentence, and that sentence was not grossly disproportionate to the grave nature of Appellant's crimes. See State v. Jones, 344 S.C. 48, 56, 543 S.E.2d 541, 545 (2001) ("The cruel and unusual punishment clause requires the duration of a sentence not be grossly out of proportion with the severity of the crime."). Furthermore, Appellant's sentence was consistent with sentences imposed in South Carolina and other jurisdictions for the same offense. See State v. Lindsey, 394 S.C. 354, 359, 714 S.E.2d 554, 556 (Ct. App. 2011) (noting Lindsey was sentenced to a thirty-year term of imprisonment for armed robbery along with a concurrent sentence for assault and battery with intent to kill); see, e.g., State v. Duncan, 28 So. 3d 410, 418 (La. Ct. App. 2009) (recognizing the Louisiana Supreme Court had previously stated sentences between thirty-five and fifty years for first-time offenders convicted of armed robbery were permissible and acceptable); Woods v. State, 71 So. 3d 1241, 1245-1246 (Miss. Ct. App. 2011) (finding a thirty-five-year sentence for a first-time offender convicted of armed robbery did not constitute cruel and unusual punishment). Appellant has failed to meet his heavy burden of establishing his punishment was grossly disproportionate or has been virtually universally rejected for his crimes. See Pittman, 373 S.C. at 565, 647 S.E.2d at 164 (finding Pittman's sentence was not cruel and unusual after noting the defendant has a

heavy burden of showing our culture and laws emphatically reject a particular sentencing practice to establish it constitutes cruel and unusual punishment). Accordingly, the trial judge did not abuse his discretion in imposing Appellant's twenty-eight-year sentence, and there is no basis to disturb Appellant's sentence on appeal. See State v. Johnson, 159 S.C. 165, 170, 156 S.E. 353, 354 (1930) ("This Court has no jurisdiction on appeal to correct a sentence alleged to be excessive, when it is within the limits prescribed by law. The length of the prison sentence rests in the sound discretion of the trial Court unless partiality, prejudice, oppression, or corrupt motive is shown."). Appellant's convictions and sentence should be affirmed.

IV.

The trial judge properly denied Appellant's directed verdict motion because the State presented both direct evidence and substantial circumstantial evidence from which the jury could find Appellant guilty of each element of the indicted offenses.

Appellant contends the trial judge erred in denying his directed verdict motion. Appellant maintains the evidence presented during trial, which included the testimony of one of Appellant's accomplices directly implicating Appellant in the crime, was not sufficient for the jury to find him guilty of the charges. To the contrary, both direct and circumstantial evidence of Appellant's guilt for the indicted offenses of armed robbery and possession of a firearm during the commission of a violent crime was presented during trial. The trial judge properly restricted his consideration of the evidence solely to whether it existed and not to its credibility before denying Appellant's directed verdict motion. Appellant's contentions during trial and on appeal merely go to the weight of the evidence as opposed to its existence, and the weight of the evidence was a matter solely for the jury to decide. Therefore, the trial judge properly denied Appellant's directed verdict motion. Appellant's convictions should be affirmed.

When presented with a motion for a directed verdict, the trial judge is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial judge should deny a directed verdict motion and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. Weston, 367 S.C. at 292,

625 S.E.2d at 648. If there is **any** direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court **must** affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). 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. Gaster, 349 S.C. at 555, 564 S.E.2d at 92. "[U]nless 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).

In Appellant's case, direct evidence and substantial circumstantial evidence was presented during trial reasonably tending to prove Appellant's guilt for the armed robbery of the Graniteville branch of the Security Federal Bank. Most critically, one of Appellant's accomplices, Kearse, directly identified Appellant as one of the robbers involved in the planning of and commission of the bank robbery. In addition to Kearse's testimony on Appellant's role in the robbery, Kearse also specifically identified Appellant as one of the gunmen in a photograph taken from the bank surveillance footage. Kearse's trial testimony identifying Appellant as one of the robbers constituted direct evidence of Appellant's guilt and alone required the trial judge to deny Appellant's directed verdict motion. See State v. Salisbury, 343 S.C. 520, 524, n.1, 541 S.E.2d 247, 248-249 (2001) ("Evidence can be divided into two basic categories: direct and circumstantial. Direct evidence is evidence based on actual knowledge and proves a fact without inference or presumption. Direct evidence immediately establishes the main fact to be proved." (citations omitted)); State v. Grippon, 327 S.C. 79, 83, 489 S.E.2d 462, 464 (1997) (approving of a jury charge instructing: "Direct evidence is the testimony of a

person who asserts or claims to have actual knowledge of a fact, such as an eyewitness."); see also Weston, 367 S.C. at 292, 625 S.E.2d at 648 ("If there is **any direct evidence** or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court **must** find the case was properly submitted to the jury." (emphasis added)). Critically, the question of whether Kearse's testimony was credible, self-serving, or both was a determination only the jury could make and had no bearing whatsoever on the merits of Appellant's directed verdict motion. See State v. Pitts, 296 S.C. 420, 427, 182 S.E.2d 738, 742 (1971) ("A motion for a directed verdict of acquittal is properly refused where the determination of guilt is dependent upon the credibility of a witness, as this is a question that goes to the **weight** of evidence and is clearly for determination by a jury." (emphasis added)); see also State v. Vanderhorst, 257 S.C. 114, 117, 184 S.E.2d 540, 541 (1971) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury. Among other considerations is the credibility of the witnesses, including that of the appellant himself.").

In addition to Kearse's testimony, substantial other evidence was presented during trial establishing Appellant's guilt. Initially, another of Appellant's co-conspirators, Wilson, confirmed Appellant was involved in the planning of the bank robbery before it occurred. Additionally, Wilson testified Appellant called two other known bank robbers on the day of the robbery to notify them he was "hemmed up" in Graniteville, which was where the robbery occurred. In addition to Wilson's testimony, Oakman testified she picked up Appellant and Javier at Kearse's direction on the morning of the robbery and dropped them off at an apartment complex only a few blocks away from the bank shortly before the robbery occurred. Oakman further testified Kearse called her after the robbery

using Appellant's phone and asked her to pick him up near a church, which was where law enforcement officers discovered Kearse hiding after the crime. In addition to Oakman's testimony placing Appellant in the company of an admitted participant in the bank robbery shortly before it occurred, multiple other witnesses confirmed Appellant was at Kalmia Apartments near the bank involved in the robbery shortly before the robbery occurred. Additionally, the evidence and testimony presented during trial established Appellant's height was the same as that of one of the robbers, and Appellant had many of the same physical features as one of the robbers captured on the surveillance footage. Furthermore, Investigator Savell confirmed Kearse confessed to the robbery only hours after the crime and identified Appellant and his brother as his accomplices. Collectively, this evidence established Appellant's guilt for the charged crimes beyond a reasonable doubt.

Viewing the evidence in a light most favorable to the State as required, the evidence presented during trial was sufficient to enable the jury to fairly and logically find Appellant guilty of each element of the indicted offenses. See State v. Claypoole, 371 S.C. 473, 477, 639 S.E.2d 466, 468 (Ct. App. 2006) ("[A] defendant is entitled to a directed verdict at the trial level when the State does not produce evidence of the offense charged; however, if the State presents *any* evidence at trial which reasonably tends to prove the defendant's guilt, the case must go to the jury." (italics in original)). Accordingly, the trial judge properly denied Appellant's directed verdict motion and submitted the case to the jury. See Nix, 288 S.C. at 496, 343 S.E.2d at 629 ("**[U]nless 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." (emphasis added)). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

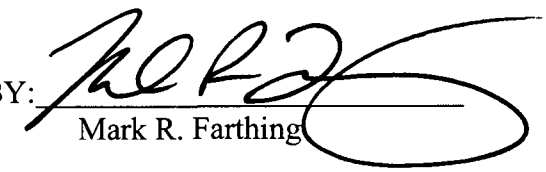
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 24, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2010-173668

THE STATE,

Respondent,

vs.

ARTRELL JABAR HICKSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

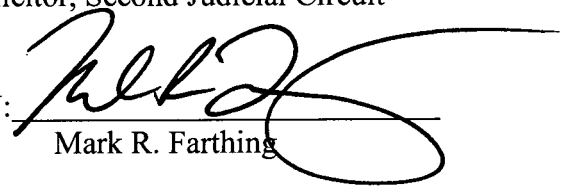
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit

BY: 
Mark R. Farthing

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jerry M. Screen, Esquire
Law Office of Jerry M. Screen
1337 Gregg Street
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served. This 24th day of July, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727