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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAVIER HICKSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II.

The trial judge did not abuse his discretion in admitting a mug shot photograph taken of Appellant's brother shortly after the bank robbery because there was a demonstrable need for the photograph, the photograph did not suggest either Appellant or his brother 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, particularly in light of the fact the photograph depicted Appellant's brother and not Appellant.

III.

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 Javier Hickson and his brother, Artrell Jabar 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 of armed robbery. In April of 2010, the Aiken County grand jury additionally indicted Appellant and his brother for one count 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. (Tr. 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. (Tr. pp. 51-52). Wood gave the gunman, who was approximately 5'4" tall and was wearing a backpack, money from her cash drawer. (Tr. 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. (Tr. p. 43; p. 52). Terrified, Key was too afraid to move and did not respond. (Tr. p. 43). The second gunman then left the offices and demanded money from Wood. (Tr. 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. (Tr. p. 52; pp. 57-58). Throughout the robbery, the third gunman remained at the door and acted as a lookout for the others. (Tr. 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] (Tr. p. 43; p. 61). The bank employees then locked the door and triggered an alarm. (Tr. 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. (Tr. pp. 60-61;

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

pp. 111-113). The bank employees informed the officers that the robbers were three black males wearing dark clothing, masks, and gloves. (Tr. pp. 111-112). Additionally, the bank employees described the suspects as approximately 5'4" tall. (Tr. 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. (Tr. 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. (Tr. p. 67; p. 69; p. 96; p. 98). Next to the church, the officers discovered David Kearse hiding underneath a storage shed. (Tr. p. 70; pp. 96-97). The officers removed Kearse from underneath the shed and took him into custody. (Tr. 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] (Tr. 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. (Tr. p. 100; p. 113). He then travelled to the location of Kearse's arrest and transported him to the Aiken County Detention Center. (Tr. pp. 133-114). After arriving at the detention center, Investigator Savell informed Kearse of his rights and interviewed him about the robbery. (Tr. pp. 114-115). Kearse admitted to committing the robbery and implicated Appellant Javier Hickson and Appellant's brother, Artrell Jabar Hickson ("Artrell"), as his accomplices in the crime.[3] (Tr. 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. (Tr. p. 123). Notably, Kearse was also dressed in black. (Tr. p. 70).

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

Subsequently, on June 30, 2009, Appellant and Artrell were arrested in connection to the robbery of the Graniteville branch of Security Federal Bank.[4] (Tr. p. 122). Once they were taken into custody, officers took photographs of the men during the booking process. (Tr. pp. 79-80; p. 122). Thereafter, Appellant and Artrell 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. (Tr. 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 Artrell. (Tr. p. 42; pp. 50-51; p. 57; p. 70). Additionally, the surveillance footage of the robbery was played for the jury. (Tr. pp. 54-55). Subsequently, the solicitor informed the trial judge that he intended to introduce a photograph taken of Artrell after he was arrested for the robbery. (Tr. p. 79). The solicitor noted Artrell's appearance had changed since the photograph was taken and asserted Artrell's identifiable features displayed in the photograph could be used to identify Artrell as one of the gunmen when compared to the surveillance footage. (Tr. pp. 79-80). In response, defense counsel for Artrell objected to the admission of the photograph and argued there was no demonstrable need for it since Artrell was available in the courtroom for comparative purposes. (Tr. p. 81). Defense counsel further claimed the photograph showed Artrell in a jail uniform. (Tr. pp. 82-83). Appellant's defense counsel also objected, arguing the prejudicial nature of the photograph outweighed its probative value. (Tr. 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 relatively

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

benign. (Tr. p. 84). However, the trial judge cautioned the solicitor to avoid calling attention to the photograph's origins. (Tr. 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. (Tr. pp. 118-119). The solicitor then introduced a photograph of Artrell taken on the day of Artrell and Appellant's arrest five days after the robbery, and the photograph was admitted into evidence over objection.[5] (Tr. p. 122). No reference was made regarding why the photograph of Artrell was taken. (Tr. 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. (Tr. 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. (Tr. p. 142). After returning home, Oakman testified Kearse asked her for a ride, and she drove him to Appellant and Artrell's home. (Tr. pp. 142-143). Oakman stated she and Kearse picked up Appellant and Artrell, who was wearing a backpack, before driving to Kearse's grandmother's house, where Kearse retrieved something from his grandmother's backyard. (Tr. pp. 144-146). Oakman indicated the four then drove to a Wal-Mart where Appellant's girlfriend and sister worked. (Tr. pp. 146-147). At the Wal-Mart, Oakman testified Appellant went inside, returned a short time later, and followed them to Graniteville in another vehicle. (Tr. pp. 147-148). Oakman noted Kearse was in possession of a cell phone at the time even though he did not own one. (Tr. p. 148). After leaving the Wal-Mart, Oakman testified she dropped the

[5] In the photograph, Artrell's full head of hair and distinctive eyebrows and nose are clearly visible. (State's Ex. # 20). Additionally, Artrell 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 Artrell is wearing is prison-issued attire, and nothing visible on the clothing identifies it as such. (State's Ex. # 20).

men off at Kalmia Apartments prior to 12:00 p.m. and then left.[6] (Tr. p. 150). Shortly after noon, Oakman stated she heard a phone ringing in her vehicle, found Appellant's phone, and answered the call. (Tr. 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] (Tr. pp. 152-154). Oakman indicated she then returned to Kalmia Apartments and encountered Appellant and Artrell's sister, Monique Hickson ("Monique"), Appellant's girlfriend, Crystal Harris, and "Devon."[8] (Tr. 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. (Tr. pp. 155-156). Oakman stated she then left the apartments in an effort to find Kearse but was unable to do so. (Tr. p. 156).

Consistent with Oakman's testimony, Stanley Galloway, a guest at Kalmia Apartments, confirmed he saw Kearse, Appellant, and Artrell at the apartment complex before lunchtime on June 25, 2009. (Tr. pp. 179-180). Likewise, Beatrix Wright acknowledged she told investigators she saw Appellant, Artrell, and Kearse at the apartment complex on the morning of the robbery. (Tr. pp. 187-188). Additionally, Candice Bryant, Wright's cousin, testified she saw Kearse, Appellant, and Artrell outside of Wright's apartment prior to the robbery.[9] (Tr. 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. (Tr. p. 114).

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

[8] Notably, Harris and Monique were supposed to be working at the Wal-Mart at that time. (Tr. pp. 175-176). However, the two unexpectedly left work at 12:55 p.m. that day, and their absences were unexcused. (Tr. 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?" (Tr. 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. (Tr. pp. 194-195). Thereafter, the solicitor asked Bryant to read her entire statement to the jury, and defense counsel for both Appellant and Artrell objected, arguing it contained inadmissible hearsay. (Tr. p. 197). The trial judge then asserted Artrell already introduced the statement before permitting Bryant to read her statement to the jury.[10] (Tr. 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.

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

Following Wright's testimony, Randy Wilson testified about his knowledge of the robbery of the Graniteville branch of the Security Federal Bank. (Tr. 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 Artrell did not introduce any exhibits during trial. (Tr. p. 258).

Paul and Jelani Edwards, and was arrested.[11] (Tr. p. 201). After he was arrested, Wilson confirmed he implicated Appellant and Artrell in the robbery on June 25, 2009. (Tr. pp. 202-203). Wilson stated he met with Paul, Edwards, Appellant, and Artrell on June 24, 2009, to discuss the robbery that was to occur the next day. (Tr. 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. (Tr. pp. 204-205). Wilson stated they decided Appellant, Artrell, and Kearse were going to commit the crime, and Paul was going to supply the firearms.[12] (Tr. 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. (Tr. p. 207). Subsequently, on the day of the robbery, Wilson stated he was at home with Paul and Edwards when Edwards' phone rang. (Tr. p. 207). Wilson testified Edwards answer the call and he overheard Artrell state "they" were "hemmed up" in Graniteville. (Tr. p. 208). Wilson stated Edwards and Paul then left in Edwards' vehicle.[13] (Tr. p. 208).

Subsequently, David Kearse testified about his involvement in the robbery of the Graniteville branch of Security Federal Bank. (Tr. 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 Artrell, Edwards, and Kearse. (Tr. p. 222). Later that week, Kearse testified he met with Appellant, Artrell, and Paul to further discuss the robbery. (Tr. pp. 223-224). During the second meeting, Kearse testified they planned

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

[12] Wilson testified Artrell asked Paul to let him use an AK-47 during the robbery, but Paul declined to give it to Artrell. (Tr. 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. (Tr. p. 214; pp. 216-217).

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

Subsequently, the State rested its case, and Artrell's defense counsel moved for a directed verdict, arguing no "credible evidence" linking Artrell to the crime had been presented, and Appellant's defense counsel joined in the motion. (Tr. pp. 252-253). The trial judge denied the motion. (Tr. pp. 252-253). Thereafter, during closing arguments, the solicitor noted Artrell's eyebrows, nose, and amount of hair matched the same

features of one of the robbers visible in the surveillance photographs. (Tr. pp. 267-268). The solicitor further argued Bryant's statement was important in placing Appellant and Artrell at the apartment complex prior to the robbery. (Tr. pp. 279-280). However, the solicitor did not reference or emphasize any of the challenged portions of Bryant's statement in his argument to the jury. (Tr. pp. 279-280). Thereafter, at the conclusion of trial, Appellant was convicted as indicted. (Tr. pp. 321-322). The trial judge then sentenced Appellant to an aggregate term of imprisonment of twenty-eight years.[14] (Tr. p. 326).

[14] Artrell was also convicted as indicted and received an identical sentence. (Tr. 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. (Tr. 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 Artrell, [Appellant], 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. (Tr. 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. (Tr. 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." (Tr. 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 Artrell 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 Artrell 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 Artrell 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 Artrell 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 and Artrell were approximately the same height as the robbers and Artrell 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

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

[19] Specifically, the bank employees testified two of the gunmen were approximately 5'4" tall with one of the gunmen slightly taller than the other. (Tr. p. 42; p. 45; p. 53). Thereafter, Investigator Savell confirmed Artrell was 5'4" tall and Appellant was 5'6" tall. (Tr. p. 121). Additionally, Artrell'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).

witnesses who allegedly made it, could not have impacted the jury's verdict. Compare 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's brother shortly after the bank robbery because there was a demonstrable need for the photograph, the photograph did not suggest either Appellant or his brother 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, particularly in light of the fact the photograph depicted Appellant's brother and not Appellant.

Appellant contends the trial judge committed reversible error by permitting the State to introduce a mug shot photograph of Appellant's brother, Artrell, taken after they were arrested for the bank robbery. Appellant maintains there was no demonstrable need for the photograph because Artrell was present in the courtroom for comparative purposes and their accomplices identified Artrell 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 Artrell'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 Artrell altered his appearance prior to trial. Furthermore, the photograph did not suggest either Appellant or Artrell 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, particularly in light of the fact the photograph was of Artrell instead of 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's brother taken after Appellant and his brother were arrested for the bank robbery. Initially, there was a demonstrable need for the photograph to be admitted during trial. Prior to trial, Artrell 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 Artrell had a similarly large amount of hair at the time of his arrest only days after the robbery was committed. Subsequently, Artrell'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 Artrell'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 Artrell's hair and distinctive features just five days after the crime to the same features of the robbers shown in the surveillance footage, Artrell's mug shot was necessary to allow the jury to properly determine if Artrell was one of the perpetrators of the crime.

Additionally, the photograph of Artrell did not suggest either Appellant or Artrell had a criminal record. The photograph, which was a picture of Artrell's head and shoulders with Artrell facing forward, depicted Artrell wearing a white shirt underneath a blue or green shirt. (State's Ex. # 20). Nothing in the photograph suggested Artrell 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 Artrell or Appellant, who was not depicted in the photograph, 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 either Appellant or Artrell 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

[20] The solicitor noted Artrell's hair was longer at the time of the crime, but the solicitor described Artrell's hair at the time of trial as "high and tight." (Tr. p. 70; p. 268). Artrell'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).

face and profile photographic display normally 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 Artrell'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 either Appellant or Artrell 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 Artrell's head and shoulders. Critically, the photograph did not show Appellant and in no way suggested Appellant or his brother 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 Artrell taken only five days after

[21] On appeal, Appellant contends the photograph was prejudicial because the only evidence directly implicating Artrell in the crime was "questionable" testimony from admitted criminals. Although the evidence against Appellant and Artrell consisted of much more than the testimony of their accomplices, Appellant's appellate argument demonstrates exactly why there was a demonstrable need for the photograph since it enabled the jury to compare Artrell'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 the brothers' accomplices' "questionable" testimony identifying Artrell 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.

the bank robbery, and Appellant suffered no prejudice from the admission of the photograph.[22] Appellant's convictions should be affirmed.

[22] Notably, the trial judge instructed the jury to consider Appellant's guilt and Artrell's guilt separately. (Tr. p. 305). That instruction helped to minimize any effect the photograph of Artrell, which constituted evidence of Artrell's guilt, could have had on Appellant's case.

III.

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 the case sub judice, 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's brother, Artrell, called two other known bank robbers on the day of the robbery to notify them "they" were "hemmed up" in Graniteville, which was where the robbery occurred. In addition to Wilson's testimony, Oakman testified she picked up Appellant and Artrell 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 Artrell'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 and his brother were approximately the same height as the robbers. 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,

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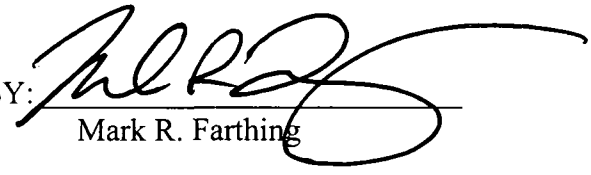
BY: 
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ATTORNEYS FOR RESPONDENT

May 18, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAVIER HICKSON,

Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

(1) Trial Transcript, pages 7, 41-76, 78-258, and 321-327;

(2) Indictments;

(3) Sentencing Sheets; and

(4) State's Exhibits # 14 (Aerial Photo), # 15 (Photo), # 16 (Photo), # 17 (Photo), # 18 (Photo), # 19 (Photo), # 20 (Photo), and # 22 (Video).

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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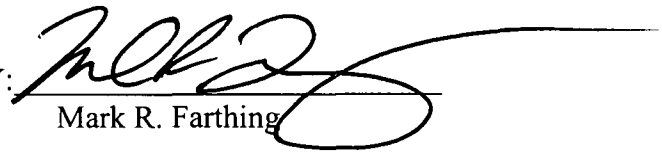
BY: 
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May 18, 2012

STATE OF SOUTH CAROLINA

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Honorable Doyet A. Early, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

JAVIER HICKSON,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter 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 18th day of May, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
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MAY 18 2012
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

May 18, 2012

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

RE: State v. Javier Hickson

Dear Mr. Screen:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services