

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 KA 2390

STATE OF LOUISIANA

VERSUS

KENDRICK MATTIRE

Judgment Rendered: September 21, 2012

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston, State of Louisiana
Trial Court Number 20698

Honorable M. Douglas Hughes, Judge Presiding

Scott M. Perrilloux
David Guidry
Greg Murphy
Charlotte Herbert
Le'Anne Malnar
Cathy Peever
Patricia Parker Amos
Livingston, LA

Counsel for Appellee,
State of Louisiana

Gregory S. Webb
Prairieville, LA

Counsel for Defendant/Appellant,
Kendrick Mattire

Charles E. Miller
Jasper Brock
McComb, MS

BEFORE: WHIPPLE, McCLENDON AND HIGGINBOTHAM, JJ.

WHIPPLE, J.

The defendant, Kendrick Mattire, was indicted by a grand jury with three counts of armed robbery, in violation of LSA-R.S. 14:64, and one count of carjacking, in violation of LSA-R.S. 14:64.2. The defendant pled not guilty and, following a jury trial, was found guilty as charged. He filed several post-trial motions, all of which were denied. On each count of armed robbery, the trial court sentenced the defendant to twenty-five years at hard labor, with the sentences to run consecutively. On the count of carjacking, the court sentenced the defendant to ten years at hard labor, to run consecutively to the three armed robbery sentences. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating nine assignments of error. We affirm the convictions and sentences.

FACTS

After a three-day trial, the defendant was found guilty of the March 10, 2006 armed robbery of Shanna Hamilton, the March 29, 2006 armed robbery of Patricia Baker, and the March 29, 2006 armed robbery and carjacking of Cathy Gill. Tara Hunter, a codefendant in this case, was also found guilty of the armed robbery of Patricia Baker.¹

The March 10, 2006 Armed Robbery of Shanna Hamilton

Several witnesses observed the defendant and Hunter at the Broadway Place Shopping Center in Denham Springs, Louisiana, on the afternoon of March 10, 2006. The defendant was first seen when he walked into Advantage Home and Properties (Advantage), a real estate office located next to the shopping center. Kimberly Smart, a real estate agent who worked at Advantage, was at the front desk of the office talking with one of Advantage's tenants, Krystal West², the

¹Hunter was also charged with the armed robbery of Shanna Hamilton, but was acquitted on that charge.

²At the time of trial, the witness was referred to as "Krystal West Malone."

owner of a fabric store in the shopping center, when the defendant walked in and asked to use the restroom. Smart told him yes, and the defendant went into the restroom, but exited almost immediately and then walked out of the office. Smart and West both noticed a female outside too, but neither was able to get a good look at her.

West then left Advantage and drove to her fabric store, parking immediately in front of the store entrance. She noticed a woman and the same man she had seen at Advantage coming around the corner, walking down the sidewalk together and looking into store windows. West waited for them to walk past her store before exiting her vehicle. A few minutes later, someone came to her store to tell her that Kean's, a dry-cleaning store located in the shopping center, had been robbed.

Shortly after West left Advantage, Smart walked over to check on two of Advantage's tenants in the shopping center. She also observed the man and woman looking into store windows, and then saw the man walk into Kean's and later exit. She went to Kean's and spoke with the clerk there, Shanna Hamilton, who informed her that she had just been robbed at gunpoint.

Around 2:00 p.m., Hamilton, who was only seventeen years old at the time of the robbery, was tagging clothes and talking on the telephone around 2:00 p.m., when a young, black male came into the store and asked to use the bathroom. She pointed him towards the bathroom, which was located in the back of the store. She continued doing work in the front of the store, but began feeling uneasy, and then noticed a woman pacing in front of the store and looking around. Hamilton felt that the woman might be looking for the man in the bathroom and was thinking of calling out to her when the man suddenly came to the front counter, held a gun to Hamilton's face, and told her to give him the money. While the man kept the gun to her face, Hamilton took out the cash drawer and gave him all the bills, then

told him there was a safe in the back of the store with a bag of money in it. The man followed her around a dividing wall towards the back of the store, where the safe was kept, and she gave the man a bag of cash from the safe. At that point, they heard another customer walk into the store, so the man put the gun into his hoodie, told her to stay where she was, and ran out.

Michael Armentor was walking into Kean's when a tall, black man came out quickly. Armentor did not see a female outside the store. Once Armentor was inside Kean's, Hamilton told him that she had just been robbed. Armentor then left to look for the man he saw when he entered the store, but his search was unsuccessful.

Detective Calvin Bowden, with the Livingston Parish Sheriff's Office (LPSO), responded to the Kean's robbery. He testified at trial that when he went to Kean's, he was looking for a tall, skinny, black male with dark clothes, and a black, overweight female. When he spoke with Hamilton immediately following the robbery, she described the couple as a tall, skinny, black male wearing a black-hooded sweatshirt and blue jeans, with a skull-cap on his head, and a black female with unkempt hair wearing a green and white shirt with pants. Armentor described the man as a tall, skinny, black male with a black jacket, baggy blue jeans, and a black skull-cap on his head. Smart described him as a tall, black man, wearing dark clothes, dark jeans and a white T-shirt, with some type of tight cap on his head. West described the man as wearing long pants and a black sweatshirt and the woman as wearing a loosely-fitting T-shirt and Capri pants. None of the witnesses described facial characteristics of the man or woman.

Detective Bowden looked around the shopping center for possible evidence and tried to obtain fingerprints from the door handle at Kean's, but no usable prints were recovered. He also discovered that the Key Point Federal Credit Union (Key Point), located in the Broadway Place Shopping Center, had a surveillance camera.

Amy Welch, who was vice president of lending at Key Point at that time, handled the bank's security and compliance. Welch testified that the bank had a camera by the back entrance and that she retrieved the footage from that camera for March 10, 2006. The only activity that she recalled seeing on the tape showed two individuals who appeared to fit the description of the perpetrators, but the images were not clear enough to see facial features. Because the camera equipment did not allow retrieval of video, she obtained some still shots, which she burned onto a CD and gave to the LPSO.

The March 29, 2006 Armed Robbery of Patricia Baker

At around 2:00 p.m. on March 29, 2006, Patricia Baker returned to her home in Albany, Louisiana, following a shopping trip to Baton Rouge. She went into the backyard to check on her dog and was returning to her car in the driveway, when she noticed a gray, four-door vehicle had parked there. She walked up to the vehicle, which had two people in it, and asked if she could help. The driver was a slim black male with gold teeth, wearing a white shirt. Baker initially thought that the passenger was another man, but at trial she described the passenger as a woman, wearing a white, long-sleeved shirt with a button-up collar, with her hair slicked back. The couple asked Baker for directions to New Orleans, and they engaged in conversation for about ten to fifteen minutes, during which time Baker was standing about three to four feet from the vehicle. Baker told them she had to go in order to take care of her other dog but, as she turned around and bent down to get the dog's chain, the driver came up behind her and ordered her to give him her keys. A struggle ensued for the keys and her purse, which was on her shoulder. The man became increasingly violent and tried to put a gun into her mouth. When he cocked the gun, the other person in the car, who Baker noticed had moved to the driver's seat, screamed at him and said to just take the purse and "let's get out of here." Eventually, the strap on the purse broke, the man took it, and then he and

the other individual drove off in the gray car. Baker called 911 and the police arrived, at which time she gave a statement describing the perpetrators as two black males, one heavysset and the other tall and slim. She did not provide any facial descriptions.

Shortly after Baker was robbed, Alton Elms, who was working at Range Car Wash in Denham Springs, noticed a purse lying on top of a full garbage can. There were police in the area so he gave the purse to an officer and showed him where he had found it. At trial, the purse, which had only one strap, was identified as the one taken from Baker.

The March 29, 2006 Armed Robbery and Carjacking of Cathy Gill

On March 29, 2006, around 2:30 p.m., Cathy Gill, a manager at Denham Finance in Denham Springs, left her office to run some errands, driving a 2004 Ford F-150 truck. When she returned to the office, she parked on the side of her building and remained in the truck as she gathered some items to take inside with her. She noticed another car pull into the driveway and presumed it was a customer. Then, her driver's-side door swung open and a man with a gun stood there. He put the gun under her chin and told her to give him her money and her purse. She handed him her purse and told him to calm down. He also asked for her keys and told her to move over. During this time, the man was standing about 18 inches from her face and was holding the back of her hair with one hand and the gun with the other. He put the gun in her mouth and told her to move over and to hurry, as "they was already after him." Gill acted as if she was about to move over, then kicked the man and jumped out of the truck. She hid behind another car, as she watched him get into the truck and drive away. She also saw a gray car being driven away by a heavysset woman.

Detective Roger May, a patrol officer with the Denham Springs Police Department, responded to Gill's 911 call. A Be-On-the-Look-Out Communication

(BOLO) was issued for a skinny, black male wearing a white T-shirt, driving a white, Ford truck. Detective May recalled that Gill described the man as a black, skinny male wearing pants and a white shirt, and that he had “weird looking” or “beady” eyes.

Gill’s truck was recovered in April 2006, being driven in Baton Rouge by a black male.

Identifications of the defendant and Hunter

LPSO Detective Woody Overton responded to the Kean’s robbery on March 10. On March 29, he learned of the robbery of Patricia Baker and, from his experience, thought it was possible that the robbery of Baker might be connected to the Kean’s robbery. When he heard about the robbery of Cathy Gill, he thought it was also related. Then, later that evening, he received a lead³ from a source in Hammond, Louisiana, which included the names of the defendant and codefendant. He used the basic information from that lead to develop a photographic lineup. To do so, he contacted a State agency, which used a computer program to develop a lineup including the person of interest and five other similar-looking faces.

On March 30, 2006, he met with Cathy Gill and showed her the photographic lineup. Gill immediately identified the defendant’s photo as the person who had taken her truck the previous day. She also testified at trial that the defendant was the person who robbed her. Following Gill’s identification, Detective Overton obtained an arrest warrant for the defendant.

Later that day, Detective Overton met with Baker and showed her a photographic lineup. She also identified the defendant as the man who had robbed her the previous day. At trial, Baker said that she selected the defendant’s picture because she recognized him. The following day, March 31, 2006, Baker again met with Detective Overton, and he showed her another lineup, from which she

³At trial, the “lead” Detective Overton referred to a report concerning the defendants at the Cedar Hotel in Hammond. However, this information was not presented to the jury.

identified Hunter as the passenger in the gray car. Although she initially thought the other individual was a man, she immediately selected Hunter's picture because she identified her by her mouth and she recognized her face.

On March 31, 2006, Detective Overton met with Krystal West and showed her photographic lineups that included the defendant and Hunter. West identified both as the individuals she saw at the shopping center on March 10, 2006. He then showed the lineups to Shanna Hamilton, but she was unable to identify the defendant. On April 6, 2006, Detective Overton met with Kim Smart to show her the lineups. She also identified the defendant as the man who came into Advantage on March 10, 2006.

The Defense

The defendant argued that he was not the perpetrator of the armed robberies, but was actually in Centreville, Mississippi, on March 10 and 29, 2006. He testified at trial that he lived with his adoptive father, Pastor Arthur Mattire, in Hammond until he was fifteen years old, at which time he moved to Centreville to be with his mother. He and his girlfriend, Chaquetta Stinson⁴, testified that on March 10, 2006, they were together at the house they shared in Centreville. It was an average day for them, hanging out and working on cars in the yard. The defendant left the house around lunchtime to get something to eat, and Stinson specifically recalled that they planned her birthday party that day. Similarly, Stinson and the defendant recalled being together on March 29, 2006. They did some chores around the house, the defendant left to get something to eat, and then he met his friend, Eric Ross⁵, to work on Ross's car in the yard until approximately 4:00 p.m. The defendant then took Stinson to her mother's house and returned to the home in Centreville. The defendant was arrested in Hammond later that night.

⁴Stinson spelled her name for the record for the first time at the sentencing hearing. Elsewhere in the record, her name is spelled "Shaquita."

⁵Eric Ross was listed as an alibi witness, but did not testify at trial. The defendant claimed that Ross could not be at trial because a relative of Ross had died the night before.

He explained that he came to Hammond to visit his father and to see his longtime friend, Tara Hunter. He claimed that he had never been to Denham Springs or Livingston Parish before March 29, 2006.

The defendant's father testified that the defendant had been living in Mississippi since he was fifteen years old, and because of that, he could not have committed the crimes in Louisiana on March 10 and 29, 2006. However, on cross-examination he admitted that he did not see the defendant on either of the dates at issue and did not know where the defendant actually was on those days. Tammy West, the owner of Tammy's Sweet Shop in Centreville, testified that on March 10, 2006, around noon, the defendant came into her restaurant to purchase lunch. She said that in March 2006, the defendant visited her business daily, but on cross-examination, she admitted that she was only asked to testify a few weeks prior to trial and until then, had never told anyone that she saw the defendant on March 10, 2006, four years earlier. Additionally, on cross-examination, Stinson admitted that she never told anyone that the defendant was with her on March 10, 2006 because she "didn't feel I had the need to tell anyone." She also admitted that there were days when she did not know where the defendant was.

ASSIGNMENTS OF ERROR

The defendant alleges nine specific assignments of error, as follows:

1. The defendant's arrest, which was based on old warrants which were void, was unconstitutional.
2. The photographic lineup identification used by the victims to identify the defendant was not based on any information retrieved from any of the victims, and the lineup was conducted after the defendant was wrongfully arrested and illegally detained.
3. The bank photographs used to identify the defendant were unreliable, as they were dated July 22, 2002, and the acts the defendant is alleged to have committed occurred on March 10, 2006 and March 29, 2006.
4. The jury selection process was conducted in violation of the requirements for due process.

5. The improperly close relationship between the presiding judge and certain jurors was a violation of the defendant's right to a fair and impartial jury.
6. The State exercised challenges to jurors based on race, in violation of Batson.
7. The trial court failed to direct a verdict for the defendant at the conclusion of the State's case.
8. The second jury venire should have been dismissed as unconstitutional because it contained tales jurors.
9. The defendant was denied a fair trial because of the misconduct of the prosecutor prior to and during the trial, citing the following incidents:
 - a. The State failed to provide the defendant with essential discovery from the State's investigation.
 - b. The State allowed potentially exonerating evidence to be destroyed.
 - c. Misconduct by the prosecutor during opening statements by using a videotape presentation to the jury explaining the law, which precluded objections by the defense.
 - d. Misconduct by the prosecutor during closing arguments when he referred to the black female codefendant as "that fat black woman," using the tone and expression as if it were an epithet.
 - e. The trial court improperly allowed unduly suggestive activities to occur in the courtroom during trial that unfairly prejudiced the jury against the defendant.
 - f. Officers were allowed to visibly display deadly weapons in the courtroom, improperly suggesting the dangerousness of the defendant.
 - g. During the defendant's trial, officers were allowed to bring into the courtroom other unrelated defendants who were visibly handcuffed, shackled and dressed in prison uniforms.

ASSIGNMENT OF ERROR NUMBER ONE

In his first assignment of error, the defendant contends that his arrest, which was allegedly based on old warrants that were void, was unconstitutional. In support of his position, he relies upon the United States Fifth Circuit Court of Appeal's decision in Moffett v. Wainwright, 512 F. 2d 496 (5th Cir. 1975). Specifically, the defendant contends that "[t]he gross violation of legal processes in [his] case where he was held on void warrants can be analogized to the situation in Moffett." However, the defendant fails to cite any evidence to support the claim that his arrest was based on warrants which were old or void. Moreover, after a

careful review of the record, we find no basis in the record to support the defendant's claim that his arrest was based on warrants that were old and void, and thus, that his arrest was unconstitutional.

The record reveals that the defendant raised this issue in the trial court during argument on his motion to suppress the photographic lineups. In an oral motion, which the trial court immediately denied, the defendant alleged that there was no probable cause to arrest him. The defendant merely argued to the trial court that he had been arrested on a traffic-related charge to which he alleged he had previously pled guilty and paid a fine.

In his brief to this court, the defendant sets forth that at approximately 9:30 p.m. on March 29, 2006, Hammond police received a call from the Cedar Motel that "suspicious subjects" were hanging around the hotel stairs and that he was ultimately arrested there on some outstanding warrants.⁶ As support, the defendant cites the Hammond Police Department report from the incident, which was not introduced into evidence at trial. The report, which was provided by the State in discovery, states that police officers responding to the Cedar Motel determined that the defendant had five outstanding warrants for his arrest.⁷ Notably, these warrants are not included in the record before us.

Pursuant to Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4, an argument on a specification or assignment of error in a brief shall include a suitable reference by volume and page to the place in the record which contains the basis for the alleged error. The court may disregard the argument on that error in the event suitable reference to the record is not made. In the instant case, the defendant has only made an unsupported bare assertion that the warrants were void or old and cites no evidence on appeal to support or establish that the warrants, or

⁶We note that while the defendant and Hunter, the "suspicious subjects," were both questioned at the Cedar Motel, only the defendant was arrested, based upon the outstanding warrants.

⁷The police report does not specify the charges or dates on the outstanding warrants.

his arrest, were defective in any way. Further, the defendant did not timely file a motion to suppress or quash his arrest on this basis. Accordingly, we find that the defendant's first assignment of error is not properly before this court.⁸

However, even if this issue were properly before this court, we find that the defendant's arrest based on allegedly old or void warrants is not analogous to Moffett, as he contends. In Moffett, the State conceded that the defendant's arrest for vagrancy was a sham and only a pretext by which the arresting officer intended to pursue his investigation into the defendant's possible connections with recent armed robberies. Moffett, 512 F. 2d at 501. The "gross violation of legal processes" in Moffett included: an acknowledgement by the arresting officer that no probable cause existed to believe that Moffett had in fact violated the vagrancy statute; the sole purpose of the arrest was to continue the investigation of Moffett; Moffett was held on a huge bond, denied access to a telephone, denied visitors, and eventually told the next morning that he would be able to make a telephone call only after his questioning was completed. Moffett, 512 F. 2d at 504. None of these enumerated "violations of legal processes" are alleged to exist in the present case. In the instant matter, the defendant was arrested on outstanding warrants which, while alleged to be old and void, are not alleged or shown to be a pretext for the police to investigate his involvement in the March 10 and 29, 2006 armed robberies. The warrant for the defendant's arrest for the armed robbery and carjacking of Cathy Gill was prepared on March 30, 2006, *i.e.*, the day after his arrest on the outstanding warrants. Further, unlike the defendant in Moffett, the defendant in the instant case does not contend, nor does the record show, any

⁸In addition, to the extent that the defendant may be arguing on appeal that no probable cause existed for his arrest, we note that this issue was specifically argued to the trial court at the hearing on the motion to suppress the photographic lineups, and the trial court denied the defendant's motion alleging there was no probable cause. The defendant was subsequently tried by a jury and convicted as charged. Therefore, the issue of probable cause for his arrest is moot. See State v. Johnson, 604 So. 2d 685, 693 (La. App. 1st Cir. 1992), writ denied, 610 So. 2d 795 (La. 1993).

mistreatment subsequent to his arrest. Thus, on the record before us, we are unable to find that the defendant's arrest on the outstanding warrants was unconstitutional.⁹

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In his second assignment of error, the defendant contends that the photographic lineup that the victims used to identify him was not based on any information retrieved from any of those same victims, and that the lineup was conducted after he was wrongfully arrested and illegally detained. He argues that none of the witnesses in the instant case were able to provide a sufficient description of the perpetrator in order to reliably identify him.

As noted above, in our disposition of defendant's first assignment of error, we considered (and rejected) the defendant's assertion that his arrest was unconstitutional given the record before us. The defendant has again failed to show, by appropriate citation to the record, how he was otherwise "wrongfully arrested and illegally detained." Accordingly, pursuant to Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4, we pretermitt further discussion of the issue of the legality of the defendant's arrest and will now consider only the arguments properly urged in this assignment of error.

The defendant made a motion to suppress the photographic lineup identifications, which was denied after a hearing. When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See State v. Green, 94-0887 (La. 5/22/95), 655 So.

⁹In addition to the absence of any evidence herein as to the dates of the warrants now challenged by the defendant, we also note that an arrest based upon an "old" warrant is not, in itself, unconstitutional. An arrest warrant remains in effect until executed and does not become stale with the passage of time. See LSA-C.Cr.P. art 205; State v. Romar, 2007-2140 (La. 7/1/08), 985 So. 2d 722, 727 (per curiam).

2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. See State v. Hunt, 2009-1589 (La. 12/1/09), 25 So. 3d 746, 751.

A defendant seeking to suppress an identification must show that the identification itself was suggestive and that there was a likelihood of misidentification as a result of the identification procedure. State v. Prudholm, 446 So. 2d 729, 738 (La. 1984); Manson v. Brathwaite, 432 U.S. 98, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977). An identification procedure is unduly suggestive if, during the procedure, the witness's attention is focused on the defendant. State v. Robinson, 386 So. 2d 1374, 1377 (La. 1980). In this case, while the defendant complains that the identifications were based on unduly suggestive lineups, he provides no basis for such claim. Furthermore, the record does not indicate anything suggestive in the lineup preparation or identification procedure. The defendant's main complaint is that the photographic lineup used by the victims to identify him was not based on information retrieved from any of those same victims, particularly a facial description of the perpetrator. However, the defendant has not cited, nor do we find, any requirement that the victim of a crime describe a suspect in order for that suspect to be included in a photographic lineup.

At the motion-to-suppress hearing, Detective Woody Overton testified concerning how the photographic lineup was developed. He investigated the Kean's robbery on March 10. When he heard about the robberies on March 29, he became suspicious that the same persons were involved in all three incidents. When a lead came in from Hammond that evening, he was able to get the defendant's name. He testified that the defendant and codefendant, who were located at the Cedar Motel in Hammond, fit the description of the suspects in a BOLO that had been issued earlier that day after the Baker and Gill robberies. Detective Overton developed a photographic lineup which he then showed to

several witnesses over the next few days. Of the five people to whom he showed the lineup, four of them identified the defendant.

In Manson, the court set forth five factors to be used in determining whether an identification was reliable: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation. Manson v. Brathwaite, 432 U.S. at 114, 97 S. Ct. at 2253.

Applying the Manson factors to the present case, we find that the identification procedure did not produce the likelihood of misidentification. Each witness who selected the defendant's photograph out of the photographic lineup testified at trial regarding the witness's opportunity to view him at the time the crime was committed, and under what circumstances. Cathy Gill testified that she was inches away from the defendant's face as he stood next to her truck. Patricia Baker testified that she had a ten-to-fifteen minute conversation with the defendant in her driveway. Kimberly Smart spoke with the defendant across the counter at Advantage, and Krystal West observed the defendant from her car, only feet away. Only Shanna Hamilton was unable to identify the defendant. All of these witnesses, including Michael Armentor, described the perpetrator as a tall, skinny, black male, and all described the clothing he was wearing. In addition, while the bank photos do not show faces, the photos show individuals wearing clothing similar to the clothing described by the witnesses on March 10, 2006, and corroborate the identifications. Gill, Baker, Smart and West were all certain in their identification of the defendant from the photographic lineup presented to them, and each identified him at trial as well. Finally, the length of time between the crime and identification was brief. For Gill and Baker, the identification occurred the day after the crimes. Accordingly, we do not find that the

identification of the defendant from the photographic lineup was unreliable. Thus, the trial court did not err in denying the motion to suppress the lineup identifications.

This assignment of error also lacks merit.

ASSIGNMENT OF ERROR NUMBER THREE

In his third assignment of error, the defendant contends that the bank photographs used to identify him were unreliable because they were dated July 22, 2002, while the acts he is alleged to have committed occurred on March 10, 2006. The defendant maintains that the photographs were copies that did not clearly identify him and that the State did not show that the original photographs were unavailable, as required by controlling law.¹⁰

The defendant first contends that the bank photographs from Key Point, which were introduced at trial, were unreliable because of an incorrect date. At trial, the State presented the testimony of Amy Welch, Key Point's vice president of lending in March 2006, who was also responsible for the bank's security and compliance. She was specifically asked to explain why the photographs were dated July 22, 2002, when the date on which they were supposed to have been taken was March 10, 2006. She testified that while she did not know why that date appeared, Key Point did not open the Broadway Place Shopping Center location until 2005, meaning it would have been impossible for the photos to have been taken on July 22, 2002. She also explained that Allied Security, the bank's security company, set the date on the camera. She described how she and a technician from Allied Security retrieved the images from the camera, and that she only looked at video taken on March 10, 2006. She stated that, despite the date, the pictures

¹⁰We note that the defendant did not make this objection at trial, but that codefendant's counsel did and the defendant joined in. Pursuant to LSA-C.Cr.P. art. 842, if an objection has been made when more than one defendant is on trial, it shall be presumed, unless the contrary appears, that the objection has been made by all the defendants. Accordingly, we will address the defendant's argument.

reflected what happened on March 10, 2006.

The State introduced testimony to explain the discrepancy and the defendant had an opportunity to cross-examine the witness concerning the date. Further, a review of the record shows that there was never a challenge to the authenticity of the images. The witness testified that it would have been impossible for the camera to record on July 22, 2002, that the date had to be set manually, and that she had only retrieved images recorded on March 10, 2006. Considering this testimony, we do not find that the bank photographs used to identify the defendant were unreliable due to the discrepancy regarding the date. In any event, the challenge on this basis to the photos, and the images depicted therein used for identification of the defendant goes to the weight of the evidence rather than to its admissibility. See State v. Williams, 362 So. 2d 530, 533 (La. 1978).

The defendant also points out that the photographs introduced at trial were copies that did not clearly identify him. There was no dispute at trial that the photos did not clearly identify the faces of the people appearing therein. However, the photos do depict a black male and black female together, allegedly at the Broadway Place Shopping Center, on March 10, 2006. There was also testimony from Smart, West, Hamilton, and Armentor regarding the defendant and codefendant's appearance and presence at the shopping center on that date, which corroborated the bank photographs. Considering the other evidence identifying the defendant as the perpetrator of the March 10, 2006 armed robbery at Kean's, we do not find that the trial court erred in admitting photographs which did not clearly identify the defendant.

The defendant also alleges that the State did not show that the original photographs were unavailable, as required by controlling law. With respect to that claim, Welch testified that the images captured by the camera were recorded to a digital video recorder (DVR) on a hard drive. She burned the images from the

DVR onto a CD, which she then gave to the police. Upon hearing this testimony, counsel for the codefendant moved for a mistrial, on the grounds that the prosecutor had only provided the defense with printed paper images, and not the CD. Counsel for the codefendant argued that if he had access to the digital images, he might have been able to enlarge them and see the faces of the persons, thereby exonerating his client. After hearing arguments, the trial court denied the motion for mistrial.

In support of his argument that the State did not show that the original photos were unavailable, the defendant cites cases which addressed former LSA-R.S. 15:436, a broad "best evidence rule" that no longer exists. The repeal of this statute and the adoption of the Code of Evidence resulted in "the demise of any broad 'best evidence' rule of exclusion of evidence." LSA-C.E. Chapter 10, Introductory Note, p. 645 (West 2006). Prior to its repeal, former LSA-R.S. 15:436 provided that "[t]he best evidence which from the nature of the case must be supposed to exist, and which is within a party's control, must be produced." See State v. Francis, 597 So. 2d 55, 59 (La. App. 1st Cir. 1992). The current Louisiana Code of Evidence provides that "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by this Code or other legislation." LSA-C.E. art. 1002.

In the present case, Welch testified that the camera equipment could not zoom and did not have the capability to expand photos to a size that would show facial features. She stated that the images on paper introduced at trial were the best images that she could provide.

Photographs which illustrate or shed light upon any fact or issue in the case or are relevant to describe the person, place or thing depicted are generally admissible. See State v. Jones, 593 So. 2d 1301, 1308 (La. App. 1st Cir. 1991),

writ denied, 620 So. 2d 868 (La. 1993). Absent a further showing, the defendant's argument that the original CD should have been produced fails. There is no allegation that the State acted in bad faith in not producing the CD, nor has the defendant shown any prejudice as a result of the State's furnishing of the photographs alone. Under these circumstances, a proper foundation was presented for the admissibility of the paper images from the bank camera and they were properly admitted at trial.

This assignment of error is without merit.

ASSIGNMENTS OF ERROR NUMBERS, FOUR, FIVE, SIX AND EIGHT – JURY SELECTION

In his fourth assignment of error, the defendant contends that the jury selection process was conducted in violation of the requirement for due process, and in his eighth assignment of error, he contends that the second jury venire should have been dismissed as unconstitutional because it contained tales jurors. However, the defendant's brief fails to include any argument regarding these assignments of error. Accordingly, under Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4, these assignments of error are considered abandoned. The defendant's other arguments concerning errors in the jury selection process are discussed in assignments of error numbers 5 and 6.

Judge/Juror Relationship

In his fifth assignment of error, the defendant alleges that an improperly close relationship between the trial judge and certain jurors deprived him of his right to a fair and impartial jury and that his challenges for cause to these jurors should have been granted. Specifically, the defendant complains about juror June Olah, who was a friend of the trial judge, and juror Bryan Taylor, the trial judge's first cousin and close friend. The defendant exhausted all of his peremptory challenges at the time the challenges for cause to Olah and Taylor were denied.

Both served on the jury, and Taylor served as foreman.

An accused in a criminal case is constitutionally entitled to a full and complete voir dire examination and to the exercise of peremptory challenges. La. Const. art. I, §17(A). The purpose of voir dire examination is to determine prospective jurors' qualifications by testing their competency and impartiality and discovering bases for intelligent exercise of cause and peremptory challenges. State v. Burton, 464 So. 2d 421, 425 (La. App. 1st Cir.), writ denied, 468 So. 2d 570 (La. 1985). A trial court is accorded great discretion in determining whether to seat or reject a juror for cause, and such rulings will not be disturbed unless a review of the voir dire as a whole indicates an abuse of that discretion. A challenge for cause should be granted, even when a prospective juror declares his ability to remain impartial, if the juror's responses as a whole reveal facts from which bias, prejudice, or inability to render judgment according to law may be reasonably implied. State v. Martin, 558 So. 2d 654, 658 (La. App. 1st Cir.), writ denied, 564 So. 2d 318 (La. 1990). However, a trial court's ruling on a motion to strike jurors for cause is afforded broad discretion because of the court's ability to get a first-person impression of prospective jurors during voir dire. State v. Brown, 2005-1676 (La. App. 1st Cir. 5/5/06), 935 So. 2d 211, 214, writ denied, 2006-1586 (La. 1/8/07), 948 So. 2d 121.

Prejudice is presumed when a trial court erroneously denies a challenge for cause and the defendant ultimately exhausts his peremptory challenges. This is because an erroneous ruling depriving an accused of a peremptory challenge violates his substantial rights and constitutes reversible error. State v. Kang, 2002-2812 (La. 10/21/03), 859 So. 2d 649, 651-52. To prove there has been an error warranting reversal of a conviction, a defendant need only show: (1) the trial court's erroneous denial of a challenge for cause; and (2) the use of all of his peremptory challenges. See Kang, 859 So. 2d at 652. Since the defendant in this

case exhausted all of his peremptory challenges, we need only consider the issue of whether the trial judge erroneously denied his challenges for cause to Olah and Taylor.

Louisiana Code of Criminal Procedure article 797 provides, in pertinent part:

The state or the defendant may challenge a juror for cause on the ground that:

(2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;

(3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict... .

Juror June Olah

The defendant argues that the trial court erred in denying his challenge for cause of June Olah. Olah, a retired teacher who was married and the mother of two adult children, indicated that she knew the trial judge, and the judge acknowledged that he knew her and her family. The judge then questioned her:

[Court]: Now, the fact that we know one another, Ms. Olah, would that affect your ability to be fair and impartial in this trial?

[Olah]: No.

[Court]: I'm a neutral guy. I don't even know the facts.

[Olah]: Me, too.

[Court]: So, you can listen to the evidence and make a decision?

[Olah]: Right.

Olah also informed the court that she was the victim of a crime, as a rental house she owned was destroyed when a methamphetamine lab inside of it blew up.

The persons responsible were prosecuted. The trial judge asked if that would affect her ability to be fair and impartial to the defendants in the instant case or would it have any bearing; she said it would not.

Defense counsel later questioned her:

[Defense counsel]: Alright. The fact that you've gone through that [the rental house incident] and that you know the Judge, you think you can be fair and impartial on a case involving armed robbery?

[Olah]: Yes.

[Defense counsel]: The fact that that happened to you and that you know the Judge, that won't affect you, at all?

[Olah]: No.

[Defense counsel]: It will not?

[Olah]: No.

The defendant challenged Olah for cause on the grounds that she knew the trial judge well and that she was the victim of a crime, asserting that those factors would be difficult to overcome and would prevent her from acting in a fair and impartial manner. Counsel for codefendant Hunter did not join in the challenge for cause, and the State argued that Olah could be fair. The trial court denied the challenge, observing, "I think that she can be fair and impartial, too."

Juror Bryan Taylor

The defendant also argues that the trial court erred in denying the challenge for cause against Bryan Taylor. The trial judge noted that he and Taylor are "very close friends," as well as first cousins. The judge then questioned Taylor:

[Court]: And so, I just want to make sure that you guys understand. Again, I don't know the facts of the case, but the fact that I'm sitting as the Judge, would that affect your ability to be fair and impartial, Bryan, in this case?

[Taylor]: No, no.

[Court]: And in fact, just so that we know, if they come back and the State has not proven their case and you deem in your mind that they are not guilty, can you vote not guilty?

[Taylor]: Yes.

[Court]: And if they come back and they've proven their case, can you vote guilty?

[Taylor]: Yes.

Defense counsel also questioned him, as follows:

[Defense counsel]: The fact that you're related to the Judge and apparently you are very close friend [sic], would that affect your judgment or your ability to be fair and impartial?

[Taylor]: No.

[Defense counsel]: It would not, okay. Thank you. If in fact there is -- well, let me finish talking -- if in fact, there is a scenario where the evidence presented by the Prosecutor is not sufficient in your mind, that there's a reasonable doubt in your mind, you think you can still vote not guilty, on Mr. Mattire's matter?

[Taylor]: Yes, if it's reasonable doubt, yes.

[Defense counsel]: I'm sorry?

[Taylor]: If it's reasonable doubt.

The defendant challenged Taylor for cause, on the grounds that he was a cousin to the judge, explaining, "I think most cousins are, and especially close cousins are more inclined to want to do what the serving Judge -- that he will perceive that the serving Judge might want to do." Again, codefendant Hunter's counsel did not join the challenge for cause, and the State argued that Taylor could be fair and impartial. The trial judge denied the challenge, stating that "In all due respect to your argument, Mr. Miller, I would allow him to remain. I think that he could be fair and impartial."

As sole legal support for his argument, the defendant cites State v. Brossette, 93-1036 (La. App. 3rd Cir. 3/2/94), 634 So. 2d 1309, writ denied, 94-0802 (La. 6/24/94), 640 So. 2d 1344. In Brossette, the trial judge excused a juror near the end of trial, over the defendant's objection, once the juror discovered that her supervisor at work was going to be a character witness for the defense. The juror

informed the court that she was scared to remain on the jury and that she felt her job would be in jeopardy if her supervisor did not agree with her vote. Brossette, 634 So. 2d at 1319. The Third Circuit Court of Appeal upheld the trial court's decision to excuse that juror for cause, finding that she could have had trouble remaining impartial due to employment concerns and that her relationship with the supervisor/witness could have affected her deliberations and vote. Brossette, 634 So. 2d at 1320. The defendant argues by analogy that, in the instant case, the trial court should have excused Olah and Taylor due to their close relationships with the judge.

Louisiana Code of Criminal Procedure article 797(3) does not include judges in the category of persons that, by virtue of their relationship to a potential juror, entitle a party to challenge that juror for cause because it would be reasonable to conclude that the relationship would influence the juror in arriving at a verdict. The defendant's argument also presupposes that the trial judge was not a neutral party in the instant case. Unlike the parties, attorneys, or witnesses, the trial judge has no stake in the outcome of the case and voices no opinion on the defendant's guilt or innocence in a jury trial. Further, the mere fact that a juror is related to a participant in the case does not disqualify the juror from service. The party challenging the juror must also show that the relationship could influence the juror in arriving at a verdict. See State v. McIntyre, 381 So. 2d 408, 410 (La.), cert. denied, 449 U.S. 871, 101 S. Ct. 209, 66 L. Ed. 2d 90 (1980).

It is well settled that the trial judge has broad discretion in ruling on a challenge for cause and his ruling will not be disturbed on appeal absent a showing of abuse of that discretion. State v. Smith, 437 So. 2d 802, 805 (La. 1983). During voir dire examination, the judge and defense counsel questioned Olah and Taylor concerning their relationships to the trial judge and whether such relationships would affect their ability to serve as impartial jurors. After carefully reviewing the

record in this case, we are satisfied that the testimony on voir dire, taken as a whole, supports the trial court's conclusion that Olah and Taylor were competent to serve as jurors. Accordingly, the trial judge did not err in denying the defendant's challenges for cause.

This assignment of error also lacks merit.

Batson Challenges

In his sixth assignment of error, the defendant contends that the State exercised challenges to jurors based on race, in violation of Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986). Specifically, the defendant objects to the State's challenges to potential jurors Jennifer Huong, an Asian-American, and Susan Fabre, an African-American.¹¹

In Batson, the Supreme Court adopted a three-step analysis to determine whether the constitutional rights of a defendant or prospective jurors have been infringed by impermissible discriminatory practices. First, the defendant must make a *prima facie* showing that the prosecutor has exercised peremptory challenges on the basis of race. Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination. State v. Handon, 2006-0131 (La. App. 1st Cir. 12/28/06), 952 So. 2d 53, 56.

In addition, LSA-C.Cr.P. art. 795 provides, in pertinent part:

C. No peremptory challenge made by the state or the defendant shall be based solely upon the race or gender of the juror. If an objection is made that the state or defense has excluded a juror solely on the basis of race or gender, and a *prima facie* case supporting that objection is made by the objecting party, the court may demand a satisfactory race or gender neutral reason for the exercise of the challenge, unless the court is satisfied that such reason is apparent from the voir dire examination of the juror. Such demand and

¹¹In the trial court, the defense also raised a Batson challenge to the State's striking of potential juror Donald Scott, an African-American man. However, on appeal the defendant only raises objections regarding Huong and Fabre.

disclosure, if required by the court, shall be made outside of the hearing of any juror or prospective juror.

D. The court shall allow to stand each peremptory challenge exercised for a race or gender neutral reason either apparent from the examination or disclosed by counsel when required by the court. The provisions of Paragraph C and this Paragraph shall not apply when both the state and the defense have exercised a challenge against the same juror.

E. The court shall allow to stand each peremptory challenge for which a satisfactory racially neutral or gender neutral reason is given. Those jurors who have been peremptorily challenged and for whom no satisfactory racially neutral or gender neutral reason is apparent or given may be ordered returned to the panel, or the court may take such other corrective action as it deems appropriate under the circumstances. The court shall make specific findings regarding each such challenge.

To establish a *prima facie* case, the defendant must show: (1) the prosecutor's challenge was directed at a member of a cognizable group; (2) the challenge was peremptory rather than for cause; and (3) relevant circumstances sufficient to raise an inference that the prosecutor struck the venireperson on account of his being a member of that cognizable group. Batson, 476 U.S. at 96, 106 S. Ct. at 1723. Without an inference that the prospective jurors were stricken because they are members of the targeted group, the defendant is unable to make a *prima facie* case of purposeful discrimination and his Batson challenge expires at the threshold. State v. Sparks, 88-0017 (La. 5/11/11), 68 So. 3d 435, 468-69, cert. denied sub nom., El-Mumit v. Louisiana, ___ U.S. ___, 132 S. Ct. 1794, 182 L. Ed. 2d 621 (2012).

The State, in presenting race-neutral reasons for its excusal of prospective jurors, need not present an explanation that is persuasive, or even plausible; unless a discriminatory intent is inherent in the State's explanation after review of the entire record, the reason offered will be deemed race neutral. A reviewing court owes the trial court's evaluations of discriminatory intent great deference and

should not reverse them unless they are clearly erroneous. Handon, 952 So. 2d at 58.

In the instant case, the defendant first raised a Batson objection to the State's peremptory challenge to Jennifer Huong, an Asian-American woman, because she was a minority. The State responded that Huong was struck because she was only in the courthouse to pay a ticket when she was selected as a tales juror. In addition, the State felt that she did not understand what was going on in the courtroom or understand the criminal system at all. The trial court, finding that the State set forth a valid reason to dismiss Huong, overruled the Batson challenge.

Thereafter, the defense asked the State to articulate a basis for exercising a peremptory challenge to Susan Fabre, an African-American woman. The State responded that Fabre was struck because of an answer she gave which indicated that she would hold the State to a higher standard if the State could not produce the gun used in the armed robberies. In addition, Fabre was formerly married to a prosecutor and she indicated that she and her ex-husband frequently disagreed, which gave the State the impression that she might side with the defense. Defense counsel countered that there were only two African-Americans presented for jury selection that day and that he did not interpret Fabre's answer about her ex-husband the same way as the State. The trial court overruled the **Batson** challenge, finding that the State offered a gender-neutral, race-neutral reason for dismissing her.

On review, we find the defense failed to make a *prima facie* showing that the prosecutor had exercised the peremptory challenges on the basis of race. The defense also failed to produce evidence sufficient to permit the trial court to draw an inference that discrimination had occurred. Further, even if the defendant had made the requisite *prima facie* showing that the prosecutor exercised peremptory challenges on the basis of race, the State articulated legitimate race-neutral

explanations for striking the minority jurors at issue. Accordingly, we find no abuse of discretion by the trial court in its denial of the defendant's **Batson** challenges regarding prospective jurors Huong and Fabre.

This assignment of error is also without merit.

ASSIGNMENT OF ERROR NUMBER SEVEN

In his seventh assignment of error, the defendant contends that the trial court erred in failing to direct a verdict in his favor at the conclusion of the State's case. In particular, he argues that there was no probable cause to arrest or hold him, that the identification evidence was unreliable, and that there was no evidence linking him to the armed robberies and carjacking. We construe this assignment of error as an allegation of insufficient evidence to support the convictions, and will treat it accordingly.¹²

As an initial matter, we note that the Code of Criminal Procedure does not provide for a motion for a directed verdict. Rather, LSA-C.Cr.P. art. 778 provides for a motion for a judgment of acquittal, but only in a bench trial. It is well settled that the trial court has no authority to grant a directed verdict in a criminal jury trial. LSA-C.Cr.P. art. 778; State v. Parfait, 96-1814 (La. App. 1st Cir. 5/9/97), 693 So. 2d 1232, 1242, writ denied, 97-1347 (La. 10/31/97), 703 So. 2d 20.

The standard of review for the sufficiency of evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime and the defendant's identity beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). See also LSA-C.Cr.P. art. 821; State v. Lofton, 96-1429 (La. App. 1st

¹²With respect to the argument that there was no probable cause to arrest him, as noted previously, the defendant has not raised proper factual or legal arguments concerning this issue. Indeed, he does not even indicate what arrest he is challenging by this assertion – the arrest on March 29, 2006 for the outstanding warrants or the subsequent arrest for the crimes at issue in this case. Thus, pursuant to Uniform Rules Louisiana Courts of Appeal, Rule 2-12.4, we consider this particular argument abandoned.

Cir. 3/27/97), 691 So. 2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So. 2d 1331. This standard of review, in particular the requirement that the evidence be viewed in the light most favorable to the prosecution, obliges the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. See State v. Mussall, 523 So. 2d 1305, 1308-11 (La. 1988). The Jackson standard of review incorporated in Article 821 is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. State v. Davis, 2000-2685 (La. App. 1st Cir. 11/9/01), 818 So. 2d 76, 79. When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. State v. Patorno, 2001-2585 (La. App. 1st Cir. 6/21/02), 822 So. 2d 141, 144.

The defendant does not contest the State's evidence showing that the crimes alleged in this case actually occurred. Instead, he challenges the issue of his identification as the perpetrator. Where the key issue is the defendant's identity as the perpetrator of the crime, rather than whether or not the crime was committed, the State is required to negate any reasonable probability of misidentification. State v. Johnson, 99-2114 (La. App. 1st Cir. 12/18/00), 800 So. 2d 886, 888, writ denied, 2001-0197 (La. 12/7/01), 802 So. 2d 641. Positive identification by only one witness may be sufficient to support a conviction. State v. Davis, 2001-3033 (La. App. 1st Cir. 6/21/02), 822 So. 2d 161, 163. Moreover, it is the factfinder who weighs the respective credibilities of the witnesses, and this court generally will not second-guess those determinations. State v. Hughes, 2005-0992 (La. 11/29/06), 943 So. 2d 1047, 1051.

Armed robbery is defined as the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, while armed with a dangerous weapon. LSA-R.S.

14:64(A). Carjacking is defined as the intentional taking of a motor vehicle, as defined in R.S. 32.1(40), belonging to another person, in the presence of that person, or in the presence of a passenger, or any other person in lawful possession of the motor vehicle, by the use of force or intimidation. LSA-R.S. 14:64.2(A).

With respect to the March 10, 2006 armed robbery at Kean's, Kimberly Smart and Krystal West each identified the defendant from a photographic lineup, and again at trial, as the person they saw in the area immediately prior to the robbery. They testified concerning how he walked into Advantage and asked to use the restroom, but immediately left. West observed him and the codefendant looking into store windows shortly thereafter, and Smart testified that she saw him enter and exit Kean's. Shanna Hamilton and Michael Armentor, who were unable to identify the defendant, testified at trial regarding the perpetrator's clothing and build, as well as his actions at Kean's on the date in question. Hamilton testified at trial that the perpetrator walked in and asked to use the restroom, then came out and put a gun in her face and demanded that she give him money, which she did. Additionally, bank photographs were introduced at trial which the State contended were depictions of the defendant and codefendant at the Broadway Place Shopping Center on the same date of the robbery at Kean's.

With respect to the March 29, 2006 armed robbery of Patricia Baker, Baker identified the defendant from a photographic lineup and again at trial. She testified at trial concerning her encounter with the defendant and described how he put a gun in her face and demanded her keys and purse.

With respect to the armed robbery and carjacking of Cathy Gill on March 29, 2006, Gill identified the defendant from a photographic lineup and again at trial. She testified that the defendant held a gun to her face while demanding her keys and purse. She was able to escape, but the defendant drove away in her truck.

Finally, the defendant testified at trial that he did not commit the crimes

because he was in Mississippi at the time they occurred. Three alibi witnesses testified on his behalf. In addition, the defendant argued extensively to the jury, through cross-examination and in closing arguments, that the witnesses who identified him in the photographic lineups were mistaken and that the defendant could not have been the perpetrator of the armed robberies on March 10 and March 29, 2006. However, it was the factfinder's role to evaluate the defendant's claim of innocence and decide whether the defendant's theory of innocence was credible, including whether there was any reasonable probability of misidentification. Where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. State v. Thomas, 589 So. 2d 555, 570 (La. App. 1st Cir. 1991).

As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. State v. Richardson, 459 So. 2d 31, 38 (La. App. 1st Cir. 1984). "Because a determination of the *weight* of the evidence is a question of *fact*, this court has no appellate *jurisdiction* to review it in appeals of criminal cases." State v. Gordon, 2001-0236 (La. App. 1st Cir. 2/15/02), 809 So. 2d 549, 552, writ denied, 2004-2438 (La. 6/24/05), 904 So.2d 733. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a jury's determination of guilt. See State v. Hendon, 94-0516 (La. App. 1st Cir. 4/7/95), 654 So. 2d 447, 450. Thus, the reviewing court is not permitted to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. See State v. Burge, 515 So. 2d 494, 505 (La. App. 1st Cir. 1987), writ denied, 532 So. 2d 112 (La. 1988). As a reviewing court, we are not empowered to substitute our idea of what the verdict should be for that of the jury. Further, the appellate court is constitutionally precluded from acting as a 'thirteenth juror' in assessing what weight to give evidence in criminal cases; that

determination rests solely on the sound discretion of the trier of fact. State v. Mitchell, 99-3342 (La. 10/17/00), 772 So. 2d 78, 83. Moreover, the fact that the record contains evidence that conflicts with the trier of fact's verdict does not render the evidence accepted by the trier of fact insufficient. See State v. Azema, 633 So. 2d 723, 727 (La. App. 1st Cir. 1993), writ denied, 94-0141 (La. 4/29/94), 637 So. 2d 460.

In the instant case, the guilty verdicts returned by the jury indicate that it accepted the State's evidence and rejected the defendant's theory of innocence. See State v. Andrews, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So. 2d 448, 453. We cannot say that the jury's determination was irrational under the facts and circumstances presented to it. See State v. Ordodi, 2006-0207 (La. 11/29/06), 946 So. 2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the jury and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. See State v. Calloway, 2007-2306 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam).

Accordingly, after a careful review of the record, we are convinced, viewing the evidence in the light most favorable to the prosecution, that a rational trier of fact could have concluded that the State proved beyond a reasonable doubt that the defendant was guilty of armed robbery and carjacking.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER NINE

In his ninth assignment of error, the defendant contends that he was denied a fair trial because of the prosecutor's misconduct prior to and during trial. In particular, the defendant complains that: (A) the State failed to provide him with essential discovery; (B) the State allowed potentially exonerating evidence to be destroyed; (C) the prosecutor used a videotape presentation during his opening

statement that explained the law to the jury and precluded any objections by the defense; (D) during closing arguments, the prosecutor referred to the black female codefendant as "that fat black woman," using the tone and expression as if it were an epithet; (E) the trial court improperly allowed unduly suggestive activities to occur in the courtroom during trial that unfairly prejudiced the jury against the defendant; (F) officers were allowed to visibly display deadly weapons in the courtroom, improperly suggesting the dangerousness of the defendant; and (G) officers were allowed to bring into the courtroom, during the defendant's trial, other unrelated defendants who were visibly handcuffed, shackled and dressed in prison uniforms.

The defendant argues that his convictions should be reversed based on the totality of the errors made prior to and during the trial and that the combination of errors made during the defendant's arrest and trial represent a violation of the Fourteenth Amendment Due Process Clause. He further contends that when a substantial denial of a constitutional right occurs, such as conviction based on an arrest made without probable cause and subsequent illegal detainment, the conviction should be reversed.

We again note that in our consideration of assignment of error number one, we addressed the issue of whether the defendant's arrest was unconstitutional based upon his detainment pursuant to allegedly old warrants which were void and concluded that, on the evidence presented, the arrest was not unconstitutional. We further determined that the defendant has abandoned his argument asserting a lack of probable cause for his arrest and that his subsequent detainment was illegal, because he has not properly briefed those issues. Therefore, we do not find that there was a substantial denial of a constitutional right warranting reversal of the defendant's convictions on these bases.

Secondly, while the defendant alleges numerous errors concerning the

prosecutor's conduct and other incidents during trial, he does not provide any statutory or judicial authority to support his arguments, nor does he include the necessary record citations or any supporting argument for this court to properly review these matters. In particular, other than to include it on the list of errors specified above, the defendant does not even reference the following in his brief: that the trial court improperly allowed "unduly suggestive activities" to occur in the courtroom during trial; that officers were allowed to display deadly weapons in the courtroom; and that officers were allowed to bring unrelated defendants into the courtroom. In addition, while the defendant contends that the prosecutor made an inappropriate reference to the codefendant during closing arguments, he has failed to provide a citation to the record where this comment can be found.¹³ Further, we can only speculate as to what the defendant refers to when he alleges that the State failed to provide him with "essential discovery."

Finally, with respect to the prosecutor's use of a videotape presentation to the jury, the defendant quotes extensively from the transcript of the parties' argument to the trial court about the use of the presentation. However, again, the defendant provides no legal authority to support his position that the use of the videotape presentation during the opening statement was erroneous or prejudicial. Under Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4, we may disregard these arguments as they do not include suitable references to the record and they are not briefed. Accordingly, we pretermitt further consideration of the defendant's broad, but unsupported, argument that his conviction should be

¹³In fact, a careful review of the closing argument transcript reveals that no such comment was made. The prosecutor made references to Hunter as a "heavy set female" and a "heavy-set black female." The defendant asked for a mistrial based upon this statement, which the trial court denied. While we have only a cold transcript to review and, therefore, cannot judge the tone and expression of the prosecutor, we do observe that this description used by the prosecutor mirrors the descriptions of Hunter provided by the witnesses who testified at trial. Hunter's counsel added that his impression was that the prosecutor's statement was more "descriptive in terms of describing the person's physical characteristics as matching the description given in the police report."

reversed based on the totality of errors made prior to and during the trial and that a combination of errors made during arrest and trial represent a violation of the Fourteenth Amendment Due Process Clause.

This assignment of error is without merit.

CONCLUSION

For the above and foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.