STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of General Sessions

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2014-002126

THE STATE, ...RESPONDENT

v.

ARTHUR WILLIAM MACON, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

The trial court properly admitted Ricky Woodberry's testimony and any alleged error was harmless.

STATEMENT OF THE CASE

Arthur William Macon (Appellant) was indicted at the October term of the grand jury for Richland County for four counts of kidnapping and one count of armed robbery (2013-GS-40-579). (R.2-3) Appellant proceeded to trial by jury and was found guilty of armed robbery. He was acquitted on the kidnapping charges. The Honorable DeAndrea G. Benjamin sentenced him to twenty-three years' imprisonment. Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On August 30, 2012, after Appellant dropped him off, Appellant's cousin, Jason Colon, entered a TD Bank and robbed it with a plastic pistol that had been altered to appear authentic. He absconded with $6,000. Appellant was eventually apprehended in connection with the crime and charged with four counts of kidnapping and one count of armed robbery.

At trial, Diana Williams testified that after noticing police cars surrounding the TD Bank parking lot, she saw a man running from that parking lot through the woods towards the parking lot of a Hilton Garden Inn. (R.42.) Thinking he looked suspicious, Williams called 911 as she followed him in her car. (R.43.) Once the man reached the Hilton, Williams observed him conversing with another man who was wearing a yellow shirt. (R.44.) The man in yellow was gesturing toward the back of the parking lot "as if he was telling the [suspicious man] to go back that way." (R.44.) The man in the yellow shirt then got into a black truck and drove away. (R.46.) As he backed out, he nearly struck Williams' vehicle and she was able to observe his face. (R.45–46.) Williams remained on the phone with 911 during this time, giving details of what occurred and a description of the truck and its driver. (R.51.) Because the tailgate of the truck was down, Williams was only able to give a partial plate number. (R.46.) Based on Williams's description, officers eventually apprehended Appellant. (R.54.) Williams, who was still in her car, drove past where he had been pulled over. (R.88–90.) After observing him, she identified Appellant as the man she had seen in the black truck. (R.55.)

Investigator Jason Williams testified he interviewed Colon upon his arrest. He expressed how distressed Colon appeared and explained the interview "took kind of a while because it seemed like he wasn't all the way there." (R.106.) He mentioned Colon was "a little mentally challenged," but he was eventually able to get Colon's statement, in which he confessed to committing the robbery. (R.106.) Investigator Williams further testified that he searched

Appellant's truck after it was impounded and discovered a police scanner which was tuned to Richland County. (R.104.) Specifically, it was set to broadcast transmissions in the region where the TD Bank was located. (R.105.)

The State then sought to offer the testimony of Ricky Woodberry, Colon's father, and made a proffer outside the presence of the jury. (R.113.) Appellant first objected to Woodberry's testimony regarding how his son sustained a childhood head injury because Woodberry was not present when Colon was shot and therefore any statement he offered was hearsay. (R.119.) Appellant additionally objected to the remainder of Woodberry's testimony—that Colon is "easily led" and "passive"—as improper character evidence designed to bolster Colon's testimony "making it seem more or less likely that [Colon] may be passive, may be cooperative with the police, may be telling the truth." (R.120.) He further argued the evidence was irrelevant. (R.120.)

After the proffer, the trial court stated it would preclude Woodberry from mentioning that his son is "easily led" or usually says yes, but would allow him to testify as to how Colon was injured and that he is passive. (R.126.) Woodberry then testified before the jury that his son was shot in the head by a stray bullet when they were living in Brooklyn, New York. (R.128.) Appellant objected and the trial court sustained the objection; however, Appellant did not move to strike and lodged no further objections. (R.128.) Woodberry continued to discuss how the bullet entered Colon's temple and went through his frontal lobe. (R.128.) According to Woodberry, Colon was subsequently diagnosed with schizophrenia. (R.129.) Woodberry further attested that his son began talking to himself and became passive. (R.129.) Colon has improved some after medication, but Woodberry testified he retained the mind of a thirteen-year-old. (R.129.)

Colon then testified.[1] He explained he had gone to the TD Bank the day of the robbery to cash his unemployment check. (R.132, 140.) However, he then testified Appellant gave him a toy gun and told him to go into the bank and demand money. (R.133.) Colon explained that Appellant had colored in part of the gun to make it look real. (R.133.) Colon testified that after the robbery he was supposed to meet Appellant in front of the hotel and get into the bed of the truck. (R.134.) On cross-examination, he indicated he and Appellant had discussed the robbery months prior, and that was when Appellant gave him the gun. (R.141.) However, on redirect, Colon suggested he had received the gun on the day of the robbery. (R.142.)

Investigator Kerry Johnson testified as to his interview with Appellant after his apprehension. He explained that initially, Appellant explicitly informed him he did not have anyone with him while he was driving around that day. (R.152.) However, after Investigator Johnson told Appellant Colon had identified him as his cousin who dropped him off outside the bank, Appellant modified his statement. He claimed Colon was with him earlier in the day because he wanted a ride to "his homeboy's house" but Appellant instead just dropped him off at the bus stop—which happened to be near the TD Bank. (R.154.)

The jury ultimately found Appellant guilty of armed robbery. (SROA.1.) He was sentenced to twenty-three years' imprisonment. (SROA.2.)

[1] Although it appears Colon had reached a plea deal with the State, no evidence of that was offered before the jury.

ARGUMENT

The trial court properly admitted Ricky Woodberry's testimony and any alleged error was harmless.[2]

Appellant argues the trial court erred in allowing Ricky Woodberry to testify about his son's mental capacity because it was hearsay, not relevant, and was improper character evidence designed to bolster Colon's testimony. He further alleges Woodberry was not qualified to give the testimony because he was not a qualified medical expert. Appellant's arguments are meritless.

In criminal cases, the appellate court's review is limited to errors of law. *State v. Dawson*, 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). 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. Holder*, 382 S.C. 278, 293, 676 S.E.2d 690, 698 (2009). Nevertheless, an appellate court will not reverse based on the erroneous admission or exclusion of evidence unless prejudice has been shown. *State v. Taylor*, 333 S.C. 159, 172, 508 S.E.2d 870, 876 (1998). Accordingly, appellate courts will decline to set aside convictions for insubstantial errors which could not reasonably have affected the result. *State v. Price*, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006).

Prior to Woodberry's testimony, Appellant objected that (1) any discussion of the circumstances leading to Colon's injury was hearsay because Woodberry was not present when the shooting occurred, and (2) any mention of Colon's mental capacity would be impermissible character evidence or otherwise irrelevant. The trial court allowed Woodberry to testify to his

[2] For simplicity, the State has combined Appellant's arguments into a single issue.

perception of his son's mental state and how his son sustained that injury; however, Woodberry was not allowed to assert that his son was easily led or usually said yes. (R.123–126.) When the jury returned, the State proceeded to question Woodberry:

> A. My son was shot in the head.
> Q. Okay. How did that occur?
> A. He was standing in front of the building where we resided at, and two gentleman [sic] came running through the building, you know, one was chasing the other, and they were shooting at each other. And my son happened to be standing there, and he caught a stray bullet.
> MS. GOLDBERG: Your Honor, I would renew my previous objection.
> THE COURT: All right. Objection sustained.
> BY MR. CATHCART: And where did the bullet exactly hit him?
> A: In his temple in his head, frontal lobe.
> Q: Okay. And when -- did the bullet stay in there?
> A: No, it went in and came out the other side.
> Q: Through the temple [sic] lobe?
> A: Yes.
> Q: Frontal lobe?
> A: Yes.
> Q: So he basically got a lobotomy from a bullet?
> A: Yes.
> Q: Did the doctors indicate -- well, did that change him in any way?
> A: Yes, it did.
> Q: Okay. Did it make him in what way? How -- did he become what?
> A: He was diagnosed with schizophrenia. He started talking to hisself [sic]. He became passive.
> Q: Did the doctors indicate his mind would be that of what?
> A: A 13-year-old.
> Q: Okay. And he is how old now?
> A: He is 28.
> Q: And has he improved in the past couple of years?
> A: No. No. While he is on medication he has gotten a little better.
> Q: Okay. But he still has the mind of 13-year-old?
> A: Yes, he does.

(R.128–129.) Appellant did not cross-examine Woodberry.[3]

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[3] Arguably, Appellant has not preserved any challenges to this testimony. During direct examination, Appellant renewed his previous objection, *which the trial court sustained.* He did not move to strike any of the testimony, offered immediately before the objection, nor did he request a curative instruction. Therefore, he failed to preserve any issue for the court's review because he received no adverse ruling to appeal. *State v. Patterson*, 324 S.C. 5, 18; 482 S.E.2d

I. HEARSAY

Appellant is precluded from arguing Woodberry's discussion of his son's mental state should be excluded on the basis of hearsay because he never objected on that ground. Instead, he limited his challenge at trial to asserting it was impermissible character evidence or not relevant. Under settled principles of issue preservation, a party may not argue one ground at trial and a different ground on appeal. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Appellant is therefore procedurally barred from making this argument. Moreover, Woodberry's testimony was based on personal observation, and any possible reference to out of court statements was not offered for the truth of the matter asserted.

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

760, 766 (1997) ("The trial judge ruled in appellant's favor and appellant failed to move to strike or request a curative instruction. Therefore, this issue is not preserved for review."); *State v. Wilson*, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010) ("When an objecting party is sustained, the trial court has rendered a favorable ruling, and therefore, it becomes necessary that the sustained party move to cure, or move for a mistrial if such a cure is insufficient, in order to create an appealable issue."). Furthermore, despite the fact that the trial court sustained the objection to testimony it had previously ruled to allow in the proffer, Appellant lodged no further objections to Woodberry's testimony. There is, therefore, no preserved contemporaneous objection for the Court to review. *State v. Johnson*, 363 S.C. 53, 58–59, 609 S.E.2d 520, 523 (2005) (holding that absent a contemporaneous objection that is ruled on by the trial court, a party is cannot raise the issue on appeal). Admittedly, the record is confusing as to what exactly is being objected to and what the judge is ruling, but in such instances it is incumbent upon defense counsel to ensure the record clearly reflects there was a contemporaneous objection that resulted in an adverse ruling. That simply was not done here.

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.").

An improper admission of hearsay testimony is only reversible error when the admission causes prejudice. *State v. Garner*, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010). Accordingly, appellate courts will decline to set aside convictions for insubstantial errors which could not reasonably have affected the result. *Price*, 368 S.C. at 499, 629 S.E.2d at 366. "Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence." *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978).

Appellant claims Woodberry's mention of his son's diagnosis of schizophrenia is hearsay; however, that reference was not presented as proof Colon was schizophrenic. As Appellant discusses in detail in his brief, many of the other observed characteristics Woodberry described seem inconsistent with schizophrenia. The testimony was offered to explain Colon's behavior, not diagnose him. The import of the testimony emanates from observations based on facts within the purview of Woodberry's experience interacting with his son. Woodberry presents his own understanding of his son's condition. His son started talking to himself. His son became passive. His son still possesses the mind of a thirteen-year-old even though he is twenty-eight.

Moreover, to the extent Woodberry's testimony contained any hearsay, it would indicate no more than that Colon suffered from a mental defect, which had already been attested to without objection by Investigator Williams, who, on three separate instances explained that Colon was "a little mentally challenged." (R.106.) Accordingly, any erroneous admission was harmless.

II. RELEVANCE AND CHARACTER EVIDENCE

Appellant's argument that Woodberry's testimony was not relevant or was improper character evidence also fails.

"The trial judge is given broad discretion in ruling on questions concerning the relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion." *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991). Evidence is relevant which tends to make some matter in issue upon which it bears more or less probable; "it is not required that the inference sought should necessarily follow from the fact proved." *State v. Sweat*, 362 S.C. 117, 126–27, 606 S.E.2d 508, 513 (Ct. App. 2004). Although evidence must be "logically relevant" to a material fact or element of the crime to be admissible, "it need not be 'necessary' to the State's case." *State v. Caldwell*, 378 S.C. 268, 287, 662 S.E.2d 474, 484 (Ct. App. 2008).

Although perhaps unnecessary given other evidence explaining the same, Woodberry's testimony was relevant because it assisted the jury in understanding the difficulties of Colon's manner in expressing himself on the stand and thereby contextualized the testimony. *Sellers v. State*, 362 S.C. 182, 190–91, 607 S.E.2d 82, 86 (2005) (discussing a witness's schizophrenia and concluding that although a "witness's mental illness is not enough to rebut the presumption [that he is competent to testify, a] witness's mental capacity could. . . affect the credibility of that witness's testimony"); 81 Am. Jur. 2d *Witnesses* § 893 ("[T]he condition of a witness's health may be shown to explain his or her demeanor while on the witness stand."); *see McGhee v. Wells*, 57 S.C. 280, 35 S.E. 529, 530 (1900) (declining, based on a lack of prejudice, to address whether it was error to allow testimony of witness's physical condition but concluding "for aught we know, it may have been relevant to explain the manner of the witness on the stand, which counsel may have deemed proper to explain, in order not to be prejudiced thereby"). The

evidence aided the jury's understanding of Colon's limited manner of expression in his testimony and this was clearly relevant in its determination of his credibility. 98 C.J.S. *Witnesses* § 626 ("Matters affecting the credibility of a witness are always relevant, and relevant evidence that affects credibility should not be excluded."). Pursuant to Rule 607, SCRE, a party may impeach the credibility of his own witness. Colon offered important testimony, but it is apparent that he had some difficulty communicating clearly and there were certainly inconsistencies in his testimony. Therefore, Woodberry's statements allowed context for contradictions that the solicitor must have anticipated Colon would make.

Nevertheless, Appellant argues that testimony served only as character evidence that Colon is "easily led by others" and therefore "has a propensity to act as instructed by others." (Appellant's Br. 5, 9.) This argument is misleading as it is premised on testimony that was *expressly excluded* by the trial court following the proffer. In addition to the testimony properly admitted, Woodberry indicated outside the presence of the jury that his son is "easily led" and "[m]ost of the time he will say yes" when asked to do something." (R.116.) However, prior to Woodberry testifying before the jury, the trial court ruled it would "not allow[] in the testimony about [Colon] being easily led" or "usually saying yes." (R.126.) Despite repeatedly arguing in his brief that this evidence was erroneously admitted, the trial court ruled in favor of Appellant at trial and did not allow Woodberry to make any comment indicating Colon does what he is told.

In actuality, the *only* statement Appellant could possibly attack as character evidence is Woodberry's comment that Colon is "passive." Despite Appellant's desire to equate this single word with the excluded language, this conclusion is simply impermissible within the bounds of semantics. As evidenced by its rulings, the trial court's understanding of how the jury would be impressed by the word passive is distinct from how it would be affected by testimony that Colon

was "easily led" or a compliant follower. Thus, the trial court limited Woodberry's testimony to use of the word passive and prohibited the rest. Under these circumstances, it cannot be said that the trial court abused its discretion because it plainly understood and was persuaded by Appellant's argument after the proffer and accordingly prohibited any suggestion that Colon was some easily controlled minion. In essence, Appellant is asserting that the trial court did not understand the meaning of the word passive and therefore should have excluded it as well.

However, passive does not carry the damning connotation Appellant presupposes. Passive is defined as:

> 1. **a**: not acting but acted upon: subject to or produced by an external agency: receptive to outside impressions or influences **b** (1) *of a verb form or voice* asserting that the person or thing represented by the grammatical subject is subjected to or affected by the action represented by the verb (2) *of a grammatical construction*: containing a passive verb form **c**: lacking in energy or will: LETHARGIC **d**: induced by an outside agency without either active participation or resistance or the individual affected
> 2. **a**: not active or operating: not moving: INERT, QUIESCENT **b**: existing in a dormant state but capable of being used or brought into play: LATENT **c**: of, relating to, or characterized by a state of chemical inactivity: not reacting readily: resistant to corrosion
> 3. *Scots law*: of, relating to, or subject to a liability
> 4. **a**: receiving or enduring without resistance: PATIENT, SUBMISSIVE, UNRESISTING **b**: carried through or expressed by indirect means: existing without being active or open

Webster's Third New International Dictionary of the English Language 1651 (2002). At the outset, it is questionable whether passive can even properly be characterized as "character" as opposed to a condition of his mental state. Although our case law has equated character and propensity, the two are not necessarily interchangeable. As one treatise has noted:

> not all evidence of propensity is evidence of character. . . . An amputee may have a tendency to limp, a person with a cold may have a tendency to sniffle, and an individual with Parkinson's disease may have a tendency to shake under stress, but these propensities are not traits of character because the behaviors are not particularly blameworthy or praiseworthy, and jurors are not likely to misestimate

> the ability of these conditions to predict the behavior on a given occasion. (internal citation omitted)).

1 *McCormick On Evid.* § 186 n.12 (7th ed.) (internal citation omitted). There is a distinction in those "propensities" that are consequential manifestations of physical impairments. Those can be neither lauded nor denigrated because they are not aspects changeable by the actor, as an honest or violent nature would be. This distinction undergirds the rationale behind disallowing character evidence—the jury should not be allowed to assume behavior based solely on what a person seems likely to do. *See State v. Nelson*, 331 S.C. 1, 7, 501 S.E.2d 716, 719 (1998) (noting character evidence at issue invited "the jury to infer Petitioner was acting in conformity with this character trait when he committed the crimes with which he was charged" and concluding "this is an improper basis upon which to determine guilt"). Allowing the jury to so speculate ignores the fact that the individual could have chosen to act otherwise. However, similar to a stroke victim's resultant forgetfulness, Colon became passive after being shot through his frontal lobe. It is an indelible part of his person, not some proclivity or natural tendency with which he can chose not to conform.

Further, though perhaps the inference could be made that Colon was generally unmotivated and inactive, and by that rationale unlikely to conceive of this crime alone, this is a conclusion left to the jury. Passive is not a direct description such as describing someone as easily led or compliant—those could indicate but one inference. Passive is multifaceted in its scope; yet, any attempt to put so fine a point on a single word out of context ignores the reality of a trial atmosphere. The jury did not pour over this one word with dictionary in hand. It heard it merely as a passing reference in the context of Colon's mental problems—he started talking to himself and he became passive. Nothing in that statement invites the sensational leap Appellant would take that the jury must have assumed Colon was somehow controllable.

Inasmuch as Woodberry's testimony may have indicated Colon was likely to go along with the suggestions of others, this conclusion could be more readily attained through examining the testimony of Colon himself, whose truncated and inconsistent responses exemplified his tendency to be led. Even Appellant's counsel attested during her closing that "Colon was very agreeable on the stand. . . . He did say yes a lot. . . . He just agrees with whatever anyone tells him to say." (R.198, 200.) Thus, if anything, the line of questioning at issue inured to the benefit of Appellant in discrediting Colon's testimony.

Of course the suggestion sought by the evidence was that Colon and Appellant acted in concert; the theory of Appellant's guilt was premised on accomplice liability. Proof of an unlawful agreement may be premised on circumstantial evidence. *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) ("In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties."). Illustrating how Colon was generally inactive and therefore unlikely to conceive of this crime alone is merely one part of presenting evidence allowing a jury to draw that inference. To the extent Appellant believes this is prejudicial, evidence adduced by the State is prejudicial by design. *See State v. Lee*, 399 S.C. 521, 529, 732 S.E.2d 225, 229 (Ct. App. 2012) (noting that "[a]ll evidence is meant to be prejudicial" and "damage to a defendant's case that results from the legitimate probative force of the evidence" is not unfairly prejudicial). Certainly the evidence corroborates Colon's testimony to some extent, but as noted above, his testimony was far from linear or consistent. It can hardly be claimed Woodberry bolstered Colon's testimony when that version of events was somewhat fluid in the retelling.

Additionally, other evidence was presented implicating Appellant such that Woodberry's testimony could not have affected the result. Diana Williams identified Appellant and his vehicle immediately after witnessing his conversation with Colon and quick departure from the parking lot. Colon's version of the events corresponded with Williams's observations. Appellant's truck had a radio set to the specific frequency used by officers in the vicinity. Moreover, the actual substance of the testimony was cumulative to Investigator Williams's repeated assertions that Colon was "a little mentally challenged." "Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence." *Blackburn*, 271 S.C. at 329, 247 S.E.2d at 337. Therefore, to the extent there was any error in the admission of Woodberry's testimony it would not be reversible because Appellant suffered no unfair prejudice and likely benefitted from the inferences arising from its admission.

III. LACK OF SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, OR TRAINING

Appellant finally challenges Woodberry's testimony on the basis that he is not a medical expert and therefore could not opine on Colon's medical condition. This argument is unpreserved and misconstrues the nature of the testimony.

Initially, Appellant never alleged Woodberry was not qualified as an expert under Rules 701 and 702, SCRE, as he does now. It is well-settled a party may not argue one ground at trial and a different ground on appeal. *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694. Appellant is therefore procedurally barred from making this argument.

Furthermore, Woodberry is clearly not offering medical testimony. Although Appellant's brief offers enlightening commentary on lobotomies and the characteristics of schizophrenia, nothing remotely scientific was presented by Woodberry. A witness is competent to give testimony as to his perceptions of the mental state of another. *State v. Keller*, 224 S.C. 257, 262,

78 S.E.2d 373, 375 (1953) (finding it was error to for the trial court not to allow a lay witness to testify as to his opinion on whether "appellant was of unsound mind, assuming that 'unsound mind' was used in the sense of being the equivalent of 'insane'"); *see State v. Cain*, 246 S.C. 536, 540, 144 S.E.2d 905, 907 (1965) *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) ("Under our decisions, it is proper for lay witnesses to express an opinion as to whether a person was insane."); 23A C.J.S. *Criminal Procedure and Rights of the Accused* § 1488 (2016) ("[A]n otherwise qualified witness who is not a medical expert can testify about a person's mental condition or sanity if that opinion is reliable and based on the witness' personal knowledge or observations.").

Woodberry indicated his son had been diagnosed with schizophrenia—not that he himself was providing such diagnosis. Further, he stated his son had been shot through his frontal lobe and merely agreed that this was akin to him being lobotomized. Woodberry's comment on the background of his son's medical condition could not reasonably be confused with expert opinion.[4] Accordingly, even if Appellant had preserved this argument, the trial court did not err in allowing Woodberry's testimony on the basis that he was not a medical expert.

[4] As Appellant acknowledges in his brief, "[i]t is clear to any thinking person that Woodberry lacked the medical knowledge to testify on this medical condition . . ." (Appellant's Br.12.)

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 21(b), SCACR.

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