IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2025 Term

_____

No. 22-674

_____

FILED

June 6, 2025

released at 3:00 p.m.
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,

v.

JOSEPH WAYNE MASON,
Defendant Below, Petitioner.

Appeal from the Circuit Court of Berkeley County
The Honorable Michael Lorensen, Judge
Criminal Action No. 20-F-213

AFFIRMED

Submitted: February 19, 2025
Filed: June 6, 2025

Jason T. Gain, Esq.
Losh Mountain Legal Services
Anmoore, West Virginia
Attorney for the Petitioner

John B. McCuskey, Esq.
Attorney General
Mary Beth Niday, Esq.
Assistant Attorney General
Office of the Attorney General
Charleston, West Virginia
Attorneys for the Respondent

JUSTICE BUNN delivered the Opinion of the Court.

JUSTICE TRUMP, deeming himself disqualified, did not participate in the decision of this case.

JUDGE PATRICK WILSON sitting by temporary assignment.

SYLLABUS BY THE COURT

1. "The action of a trial court in admitting or excluding evidence in the exercise of its discretion will not be disturbed by the appellate court unless it appears that such action amounts to an abuse of discretion." Syllabus point 10, *State v. Huffman*, 141 W. Va. 55, 87 S.E.2d 541 (1955), *overruled on other grounds by State ex rel. R.L. v. Bedell*, 192 W. Va. 435, 452 S.E.2d 893 (1994).

2. "A trial court's ruling on authenticity of evidence under Rule 901(a) of the West Virginia Rules of Evidence will not be disturbed on appeal unless there has been an abuse of discretion." Syllabus point 12, *State v. Boyd*, 238 W. Va. 420, 796 S.E.2d 207 (2017).

3. "In an analysis under *W. Va. R. Evid.* 901[,]. . . the trial judge is required only to find that a reasonable juror could find in favor of authenticity or identification before the evidence is admitted. The trier of fact determines whether the evidence is credible." Syllabus point 1, in part, *State v. Jenkins*, 195 W. Va. 620, 466 S.E.2d 471 (1995).

4. “Generally, out-of-court statements made by someone other than the declarant while testifying are not admissible unless: 1) the statement is not being offered for the truth of the matter asserted, but for some other purpose such as motive, intent, state-of-mind, identification or reasonableness of the party’s action; 2) the statement is not hearsay under the rules; or 3) the statement is hearsay but falls within an exception provided for in the rules.” Syllabus point 1, *State v. Maynard*, 183 W. Va. 1, 393 S.E.2d 221 (1990).

5. “This Court will not reverse a denial of a motion to sever properly joined defendants unless the petitioner demonstrates an abuse of discretion resulting in clear prejudice.” Syllabus point 3, *State v. Boyd*, 238 W. Va. 420, 796 S.E.2d 207 (2017).

BUNN, Justice:

Following the shooting death of Ms. Taylor Hawkridge in June 2014, a jury convicted Petitioner Joseph Mason of first-degree murder, without a recommendation of mercy, and conspiracy to commit murder. By order dated August 19, 2022, the circuit court sentenced Mr. Mason to life imprisonment without mercy for first-degree murder and to a consecutive term of imprisonment for not less than one year nor more than five years for conspiracy. On appeal, Mr. Mason asserts five assignments of error, contending that the circuit court erred by: (1) admitting into evidence a photograph of a social media post without sufficient authentication; (2) permitting prohibited 404(b) evidence related to his gang and drug affiliations and his dislike of police informants; (3) permitting improper hearsay testimony under the guise of a prior consistent statement; (4) failing to sever his trial from that of his codefendant; and (5) denying him a fundamentally fair trial through cumulative error. Because we find no error, we affirm the convictions and the circuit court's sentencing order.

I.

FACTUAL AND PROCEDURAL HISTORY

In the early morning hours of June 28, 2014, Ms. Hawkridge was shot to death in the parking lot of her apartment complex after returning home from work at Vixens Gentlemen's Club ("Vixens"). During the subsequent investigation, eyewitnesses told law enforcement they saw a man wearing a hooded sweatshirt fleeing the scene and entering a

dark colored Dodge Charger. Law enforcement also received reports that Ms. Hawkridge had a verbal altercation at Vixens with Nasstashia Van Camp Powell. Ms. Powell accused Ms. Hawkridge of having an inappropriate relationship with Ms. Powell's boyfriend, Mr. Mason. Law enforcement interviewed Ms. Powell regarding her activities between the evening of June 27 and the morning of June 28. Throughout the investigation, law enforcement spoke with Ms. Powell on several occasions; she provided continually evolving statements. Ms. Powell initially denied having any involvement in or knowledge of Ms. Hawkridge's murder. Later, though, after a jury convicted her for the second-degree murder of Ms. Hawkridge, she reached an agreement with the State where, in exchange for a statement fully describing her knowledge of Ms. Hawkridge's murder, the State would recommend that her sentence be reduced by fifteen years. Ms. Powell then implicated Mr. Mason and Richard Small in Ms. Hawkridge's murder. She explained that Mr. Mason and Mr. Small were paid by another individual to commit the murder, and they were further motivated by Ms. Hawkridge's actions as a confidential drug informant.[1] Ms. Powell also led law enforcement to the location of the murder weapon, a .45 caliber pistol.

A Berkeley County grand jury indicted Mr. Mason in a joint indictment with Mr. Small in October 2020, alleging, in separate counts, that they each committed first-

[1] Ms. Powell identified this individual as Armistead Craig. The State did not charge Mr. Craig in connection with Ms. Hawkridge's murder.

degree murder[2] and conspiracy to commit murder.[3] In July 2021, Mr. Mason filed a motion to sever, arguing that he had a right to be tried separately from Mr. Small. The circuit court conducted a hearing on the motion and concluded that Mr. Mason failed to demonstrate sufficient prejudice required for severance pursuant to Rule 14(b) of the West Virginia Rules of Criminal Procedure, because Mr. Mason's counsel admitted he was unaware of any evidence against Mr. Small that would not also be admissible against Mr. Mason as a co-conspirator. To allay any concern about prejudice from the joint trial, the State also recommended that the circuit court instruct the jury that each defendant's level of culpability should be considered separately. The circuit court denied Mr. Mason's motion to sever but indicated it would reconsider the motion if he could identify any evidence that would be inadmissible against him but admissible against Mr. Small.[4]

In September 2021, the State filed a notice of intent to introduce certain evidence against Mr. Mason that it claimed was intrinsic to the charged crimes or otherwise permissible under Rule 404(b) of the West Virginia Rules of Evidence. Specifically, the State sought to admit evidence of Mr. Mason's drug dealing, affiliation with the Crips gang,

[2] *See* W. Va. Code § 61-2-1 (defining first-degree murder).

[3] *See* W. Va. Code § 61-10-31 (setting out the crime of conspiracy).

[4] In addition, the court noted that there was a pending issue as to whether Mr. Small's counsel should be disqualified and indicated that it may also reconsider Mr. Mason's motion to sever if that pending issue delayed Mr. Small's trial.

and hatred of police informants. Mr. Mason also moved the court to exclude from evidence a photograph of an Instagram post under the username "craccloc141" depicting a .45 caliber pistol.[5] In his motion, Mr. Mason argued that the photograph could not be authenticated, and, even if it was somehow authenticated, its admission would be unfairly prejudicial.

The court held a pretrial hearing in January 2022 to address the State's notice of intent to introduce intrinsic or permissible 404(b) evidence and Mr. Mason's motion to exclude the photograph.[6] Sergeant Jonathan Bowman of the West Virginia State Police testified about the authenticity of the photograph showing the pistol. Sergeant Bowman explained that, after he learned Mr. Mason went by the name "Cracc" and had an Instagram account, Sergeant Bowman found a public Instagram page for craccloc141 that displayed a profile picture of Mr. Mason. The Instagram page had photographs of Mr. Mason, including "selfies" of Mr. Mason and his friends. Sergeant Bowman testified that he personally viewed the photos posted on the account. A law enforcement officer printed the photographs of interest, and someone—Sergeant Bowman could not remember who—took a cell phone photograph of the printouts. Additionally, the content provided by Instagram

[5] The State alleged that the "craccloc141" Instagram account belonged to Mr. Mason and the pictured .45 caliber pistol matched the murder weapon.

[6] Prior to the hearing, the State filed an amended notice supplementing its original notice by identifying the specific testimony and exhibits it sought to introduce at trial.

in response to a search warrant matched the photographs and information that Sergeant Bowman personally viewed on the craccloc141 Instagram account, although the search warrant material did not include the post depicting the pistol. Moreover, Sergeant Bowman stated that, according to Ms. Powell, who claimed to be familiar with the Instagram account and the post, the post had been deleted from Instagram and the pistol depicted in the photograph was the same type used to kill Ms. Hawkridge.

The circuit court was persuaded that the craccloc141 Instagram account belonged to Mr. Mason based on photographs of him and his associates posted on the account, Ms. Powell's knowledge of Mr. Mason and his social media accounts, and Ms. Powell's ability to identify the murder weapon and its location. Therefore, the court denied Mr. Mason's motion to exclude the photograph of the Instagram post. In the same order, the court found that the evidence of Mr. Mason's drug dealing, membership in the Crips gang, and animus toward police informants was admissible as intrinsic to the crimes charged, and to the extent it was not, the evidence was permissible pursuant to Rule 404(b)(2) to prove motive and identity.

At trial, the State theorized that Mr. Mason and Mr. Small murdered Ms. Hawkridge for being a confidential informant who reported illegal drug sales to law

enforcement officers. The State called numerous witnesses,[7] including former West Virginia State Trooper Brian Bean, who testified that Ms. Hawkridge worked as a confidential informant for him after he caught her selling drugs. As a confidential informant, Ms. Hawkridge completed a controlled buy[8] from Mr. Craig, the uncharged additional individual,[9] who called her afterward and "told her to be careful because the police may have observed their transaction." Mr. Bean testified Ms. Hawkridge attempted more buys from Mr. Craig, but Mr. Craig would not answer her calls. She was killed shortly after her last phone call to Mr. Craig went unanswered. While Ms. Hawkridge was Mr. Bean's only informant that had been murdered, he "investigated other murders where the motive was belief that the victim was an informant."

The State called Sergeant Bowman to testify regarding text messages concerning illegal drug sales between Ms. Hawkridge and Mr. Mason. Sergeant Bowman further described Mr. Mason's gang affiliation, his dislike of police informants, and his known alias "craccloc" or "Cracc." Sergeant Bowman explained that "loc" meant "love of Crips." Discussing the contents of several social media posts from both Instagram and

[7] We only recount the necessary and relevant portions of the trial testimony.

[8] "A controlled buy is when a confidential informant or undercover agent uses money from the government to buy drugs as part of an investigation." *United States v. Chisholm*, 940 F.3d 119, 121 n.1 (1st Cir. 2019).

[9] See *supra* note 1.

Facebook that law enforcement discovered during the investigation, Sergeant Bowman informed the jury of one such post that included a photograph of a firearm with an extended magazine capacity[10]—the same type of firearm used in Ms. Hawkridge's murder. Other posts depicted drug-related activity and contained comments by Mr. Mason denigrating police informants.[11] Sergeant Bowman also told the jury about how he received numerous calls from the public reporting a Facebook post on Ms. Powell's account that revealed Ms. Hawkridge's status as an informant and Mr. Mason's involvement in Ms. Hawkridge's murder.[12]

---

[10] The photograph included the caption, "Extendo if a p[****] wanna try me!!! Crip Life."

[11] These comments included words such as "snitches" or "rats." There was also a photograph of Mr. Mason's body tattoo, which read "A man's ruin lies in his tongue."

[12] Ms. Powell denies that she authored this post. It referred to Mr. Mason as "Joey" and stated as follows:

> Joey's my baby daddy. No, I didn't kill Taylor. Yes, Tiara Brown showed me where she lived at on that Tuesday. Taylor was a snitch. No one wants to talk about that, how she got caught up and decided to roll on people. Guess people want to keep that a secret to weight out the fact she's a good person. She's everyone's sister, everyone's friend. Well, I guess y'all snitching too. Yes, I found out where she lived for Joey. No, I didn't go there. . . . [N]o, I didn't know he was going to kill her. So, yes, Joey had something to do with it. Yes, it was my car. No, I wasn't there. And yes, I was at the club. New Nassy. I'm living for me and my babies.

Ms. Powell also testified and recounted the events surrounding the murder. She recalled being nearby during a meeting at a sporting goods store between Mr. Mason and Mr. Small. Ms. Powell could not hear the entire conversation but heard Ms. Hawkridge's name; the phrase, "how to do it"; and the word "informant." Prior to the murder, Mr. Mason asked Ms. Powell to get Ms. Hawkridge's address, which she did. On the night of the murder, Mr. Mason went to Ms. Powell's home and asked her to go to Vixens. She went to Vixens, and shortly after arriving, Mr. Mason texted Ms. Powell and instructed her to drive to Hagerstown, Maryland, to retrieve Mr. Small from the Clarion Inn. After she retrieved Mr. Small, the two went to Ms. Hawkridge's home and waited for her to arrive. Once Ms. Hawkridge got home, Mr. Small got out of the car and shot her twice. Mr. Small returned to the car, and Ms. Powell drove away while Mr. Small disassembled the gun and discarded it out of the car window. Afterward, Ms. Powell witnessed Mr. Craig pay Mr. Mason $10,000 in a brown bag. Mr. Mason kept $3,000 for himself and gave the bag with the remaining $7,000 to Mr. Small.

During cross-examination, Ms. Powell acknowledged giving approximately six to eight different statements to law enforcement about Ms. Hawkridge's murder and admitted that her statements changed throughout. She further answered questions about a conversation with her friend, Tiffany Linton:

Q. Could you tell us what you told [Ms. Linton]?

A. I believe—not 100 percent—but I believe I told her that [Mr.] Small had shot [Ms. Hawkridge]. And I'm not what all sure, whatever—I'm not sure everything that I told her.

Q. Did you tell her what your role in the offense was?

A. Yes. I told her I drove the car.

Q. Did you ever tell her that you were supposed to be the one that pulled the trigger that killed [Ms. Hawkridge]?

A. No, sir.

Q. Did you ever tell her that you backed out at the last second and froze up, and that Mr. Small had to be the one to do it?

A. No, sir.

Q. Did you ever tell her that [Ms. Hawkridge] was killed because she stole money from [Mr. Mason] so she could go to Las Vegas?

A. No, sir.

Q. Did you ever tell her that the night before the murder, the night of—at Vixens, that you were there with [Mr. Mason] and Mr. Small?

A. No, sir.

Q. Did you ever tell her that you were at Vixens the night of the murder, and that you followed [Ms. Hawkridge] home?

A. No, sir.

The State's next witness was Ms. Linton. The State had filed a pretrial notice that it would call Ms. Linton to testify about a conversation she had with Ms. Powell, during

which Ms. Powell purportedly made statements consistent with the version of events she testified to at trial. However, before the State called Ms. Linton, Mr. Mason's counsel objected and argued that his cross-examination of Ms. Powell established that Ms. Linton's expected testimony about her conversation with Ms. Powell would not be consistent with Ms. Powell's account of that conversation. The court overruled Mr. Mason's objection and allowed Ms. Linton to testify. During Ms. Linton's testimony, the State asked "what exactly" Ms. Powell told her. Mr. Mason's counsel again objected on hearsay grounds. The State maintained that "[c]ertain aspects" of Ms. Linton's answer would confirm testimony given by Ms. Powell. The court again overruled Mr. Mason's objection but gave a limiting instruction before allowing Ms. Linton to answer.[13] Ms. Linton then testified that a few months after Ms. Hawkridge's murder, Ms. Powell told Ms. Linton about the night of the murder:

> [Ms. Powell] told me that the night of the murder, her, [Mr. Small] and [Mr. Mason] were at the club that [Ms. Hawkridge]

[13] The circuit court gave the following limiting instruction regarding a prior consistent statement:

> Ladies and gentlemen of the jury, really what we're talking—when a witness has been cross-examined and shown to have given different versions of the facts at issue, it is after that, permissible to offer extrinsic evidence, or other evidence of statements which would show that the version she gave yesterday and this morning were versions that she believed all along. And so, prior consistent statement.
>
> Now whether that is matching with your recollection or not, is entirely for you to consider. And it should be considered just for that limited purpose.

> worked at. That her and [Mr. Small] were told to leave the club by [Mr. Mason], to go kill [Ms. Hawkridge], because he thought that she was setting him up. Or she had stole[n] from him. When they got to [Ms. Hawkridge's] townhouses [sic], [Ms. Powell] couldn't pull the trigger, so she had [Mr. Small] do it.

The jury found Mr. Small and Mr. Mason guilty of each count charged in the indictment and the matter proceeded to the mercy phase of the trial. The jury decided not to recommend mercy and, by order entered on August 19, 2022, the court sentenced Mr. Small and Mr. Mason to life imprisonment without mercy for first-degree murder and to a consecutive term of imprisonment for not less than one year nor more than five years for conspiracy. Mr. Mason now appeals that order.

II.

STANDARD OF REVIEW

The first three issues raised by Mr. Mason challenge evidentiary rulings by the circuit court, which we generally review for an abuse of discretion. This Court has held that "The action of a trial court in admitting or excluding evidence in the exercise of its discretion will not be disturbed by the appellate court unless it appears that such action amounts to an abuse of discretion." Syl. pt. 10, *State v. Huffman*, 141 W. Va. 55, 87 S.E.2d 541 (1955), *overruled on other grounds by State ex rel. R.L. v. Bedell*, 192 W. Va. 435, 452 S.E.2d 893 (1994). *See also* Syl. pt. 1, *State v. Timothy C.*, 237 W. Va. 435, 787 S.E.2d 888 (2016) ("A trial court's evidentiary rulings, as well as its application of the Rules of

Evidence, are subject to review under an abuse of discretion standard." (quoting Syl. pt. 4, *State v. Rodoussakis*, 204 W. Va. 58, 511 S.E.2d 469 (1998))). Some of these evidentiary issues are also governed by a more specific standard of review, as are Mr. Mason's remaining two issues. Accordingly, we set out additional standards of review, as needed, in connection with our discussion of the issues to which they relate.

III.

DISCUSSION

Mr. Mason assigns five errors on appeal, all of which we find meritless. We address each in turn.

A. Authentication of Photograph of Social Media Post

Mr. Mason first alleges that the circuit court erred by admitting into evidence a photograph depicting an Instagram post showing a pistol that purportedly matched the murder weapon without sufficient authentication. We find that the circuit court did not err in finding that the State properly authenticated this photograph of an Instagram post through sufficient evidence showing distinctive characteristics.

We have held that "A trial court's ruling on authenticity of evidence under Rule 901(a) of the West Virginia Rules of Evidence will not be disturbed on appeal unless

there has been an abuse of discretion." Syl. pt. 12, *State v. Boyd*, 238 W. Va. 420, 796 S.E.2d 207 (2017).

Rule 901(a) of the West Virginia Rules of Evidence governs the authentication of evidence and provides that "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." We have further acknowledged that "the standard of admissibility under Rule 901(a) is rather slight[.]" *Boyd*, 238 W. Va. at 443, 796 S.E.2d at 230 (quoting 2 Louis J. Palmer, et al., *Handbook on Evidence for West Virginia Lawyers*, § 901.03, at 431-32 (6th ed. 2015)). In other words, a court must determine whether the "evidence [is] sufficient 'to support a finding' that the object is authentic." *Id.* (quoting 2 Palmer, et al., *Handbook on Evidence*, § 901.03, at 431-32).[14] As this Court has held, "In an analysis under *W. Va. R. Evid*. 901[,] . . . the trial judge is required only to find that a reasonable juror could find in favor of authenticity or identification before the evidence is admitted. The trier of fact determines whether the evidence is credible." Syl. pt. 1, in part, *State v. Jenkins*, 195 W. Va. 620, 466 S.E.2d 471 (1995).

[14] *See also Hasan v. W. Va. Bd. of Med.*, 242 W. Va. 283, 295, 835 S.E.2d 147, 159 (2019) ("It has been explained that 'authentication requires nothing more than proof that a document or thing is what it purports to be.'" (quoting 2 Palmer, et al., *Handbook on Evidence*, § 901.02, at 429)).

West Virginia Rule of Evidence 901(b) provides a non-exhaustive list of evidence that satisfies the authentication requirement.[15] For example, an item may be authenticated by testimony of a witness with knowledge that the "item is what it is claimed to be." W. Va. R. Evid. 901(b)(1). Additionally, an item may be authenticated through "[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances." *Id.* at (b)(4).

In this case, Sergeant Bowman testified that he personally observed this post on a public Instagram account and that the post was accurately depicted in the photograph. Furthermore, the account where the post originated had several photographs of Mr. Mason

---

[15] Mr. Mason argues that we should apply Syllabus point 2 from *State v. Benny W.*, which provides that

> Under Rule 901(a) of the West Virginia Rules of Evidence, *social media text messages* may be authenticated in numerous ways including, for example, by a witness who was a party to sending or receiving the text messages, or through circumstantial evidence showing distinctive characteristics that link the sender to the text messages.

242 W. Va. 618, 837 S.E.2d 679 (2019) (emphasis added). As demonstrated by the plain language of the Syllabus point, *Benny W.* concerns the authentication of social media *text messages* between specifically intended individuals. *Benny W.* gives examples of how a party may authenticate this type of evidence: "by a witness who was a party to *sending or receiving the text messages*, or through circumstantial evidence showing distinctive characteristics that *link the sender to the text messages*." *Id.*, in part. (emphasis added). Here, the evidence in question is a photograph of a social media *post* that is accessible to anyone who happens to have access, not a direct message between specific individuals. Given that important distinction, we find *Benny W.* is not applicable under these circumstances.

and his friends, and the official records received from Instagram included many of the same posts and content Sergeant Bowman had previously viewed on the account. Further evidence of his ownership is the username of the account, which matched Mr. Mason's alias according to testimony during trial. We, therefore, conclude that the circuit court did not abuse its discretion in finding that the State satisfied Rule 901's requirements and admitting the photograph of the Instagram post into evidence based upon the testimony presented by the State.

To the extent that Mr. Mason also alleges that he did not take or post this photograph, his challenge concerns the "integrity of electronic data," and questions regarding integrity "generally go to the *weight* of electronically based evidence, *not its admissibility*." *State v. Manuel T.*, 254 A.3d 278, 298 (Conn. 2020) (quoting *State* v. *Tieman*, 207 A.3d 618, 622 (Me. 2019)). At trial, Mr. Mason's counsel extensively cross-examined Sergeant Bowman about the weight of this evidence, including the way the State authenticated the photograph and that nothing contained in the post indicated that Mr. Mason actually possessed the firearm. This is a credibility issue for the jury to determine. *See* Syl. pt. 1, in part, *Jenkins*, 195 W. Va. 620, 466 S.E.2d 471. *See also Boyd*, 238 W. Va. at 444, 796 S.E.2d at 231 ("As noted by the Fourth Circuit, '[t]he factual determination of whether evidence is that which the proponent claims is ultimately reserved for the jury.'" (alteration in original) (quoting *United States v. Vidacak*, 553 F.3d 344, 349 (4th Cir. 2009))). The circuit court's role was to determine the threshold finding of admissibility.

Therefore, we find that the circuit court did not err in its ruling regarding the authenticity of the photograph of the Instagram post.[16]

B. Intrinsic Evidence

Mr. Mason contends that the circuit court erred by permitting the State to present evidence related to his gang and drug affiliations and his dislike of police informants, alleging that the evidence is impermissible character evidence of a crime, wrong, or other act which runs afoul of Rule 404(b)(1) of the West Virginia Rules of Evidence.

[16] This determination is consistent with the court's ruling in *People v. Valdez*, where the defendant challenged "a trial exhibit consisting of printouts [from] his MySpace social media Internet page, which the prosecution's gang expert relied on in forming his opinion [that the defendant] was an active gang member." 135 Cal. Rptr. 3d 628, 630 (Cal. Ct. App. 2011). The court found no error regarding the authentication of the printouts because there was "indicia the page was his" including "greetings addressed to him by name . . . and by relation . . . in a section of the page where other MySpace users could post comments" and that the "page owner's stated interests, including an interest in gangs generally and in [the gang] specifically, matched what the police otherwise knew of [the defendant's] interests from their field contacts with him." *Id.* at 633. Accordingly, "[t]his suggested the page belonged to [the defendant] rather than someone else by the same name, who happened to look just like him." *Id.* Furthermore, the court found that while the defendant "was free to argue otherwise to the jury, a reasonable trier of fact could conclude from the posting of personal photographs, communications, and other details that the MySpace page belonged to him." *Id.* For similar reasons, the court found that the lower court "could conclude that particular items on the page, including a photograph of [the defendant] forming a gang signal with his right hand, met the threshold required for the jury to determine their authenticity." *Id.*

Pursuant to Rule 404(b)(1), "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."[17] However, "evidence which is 'intrinsic' to the indicted charge is not governed by Rule 404(b)." *State v. Harris*, 230 W. Va. 717, 722, 742 S.E.2d 133, 138 (2013) (per curiam). "'Other act' evidence is 'intrinsic' when the evidence of the other act and the evidence of the crime charged are 'inextricably intertwined' or both acts are part of a 'single criminal episode' or the other acts were 'necessary preliminaries' to the crime charged." *State v. LaRock*, 196 W. Va. 294, 312 n.29, 470 S.E.2d 61, 631 n.29 (1996) (quoting *United States v. Williams*, 900 F.2d 823, 825 (5th Cir. 1990)).[18] Thus, before conducting any Rule 404(b) analysis, a court must first determine if the "other bad acts" were intrinsic or extrinsic evidence. *LaRock*, 196 W. Va. at 312 n. 29, 470 S.E.2d at 631 n. 29.

[17] The Rule recognizes certain permitted uses of evidence of a crime, wrong, or other act: "[t]his evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." W. Va. R. Evid. 404(b)(2), in part.

[18] *See also United States v. Johnson*, 463 F.3d 803, 808 (8th Cir. 2006) ("Evidence of other wrongful conduct is considered intrinsic when it is offered for the purpose of providing the context in which the charged crime occurred."); *State v. Myers*, 570 P.2d 1252, 1258 (Ariz. 1977) (en banc) ("Evidence of other crimes can be admitted when it is so interrelated with the crime with which the defendant is presently charged that the jury cannot have a full understanding of the circumstances without such evidence[.]").

This Court has previously found that gang affiliation evidence can be intrinsic to a crime when it provides context. In *State v. Vincent*, No. 21-0656, 2022 WL 17444782 (W. Va. Dec. 6, 2022) (memorandum decision), the Court found that gang affiliation evidence was intrinsic, as the evidence "was necessary to a full presentation of the case, [and was] appropriate in order to complete the story of the crime on trial by proving its immediate context or the res gestae. Thus, the circuit court's ruling was reasonable, and we f[ound] no error." *Id.*, 2022 WL 17444782, at *2 (first alteration in original) (quotations and citation omitted).[19] Similarly, the United States Court of Appeals for the Sixth Circuit found that evidence of a defendant's gang affiliation can be admissible as part of the res gestae of the crime because gang affiliation evidence may demonstrate "the catalyst for all of the events underlying the charged crime." *United States v. Peete*, 781 F. App'x 427, 439 (6th Cir. 2019). *See also Williams v. State*, 846 S.E.2d 190, 202 (Ga. Ct. App. 2020) (finding "evidence related to [the defendant's] gang membership was

[19] *Cf. People v. Avitia*, 24 Cal. Rptr. 3d 887, 892 (Cal. Ct. App. 2005) ("Gang evidence is admissible if it is logically relevant to some material issue in the case other than character evidence, is not more prejudicial than probative, and is not cumulative. . . . However, gang evidence is inadmissible if introduced only to show a defendant's criminal disposition or bad character as a means of creating an inference the defendant committed the charged offense." (quotations and citations omitted)); *State v. Scott*, 213 P.3d 71, 75 (Wash. Ct. App. 2009) ("Courts have regularly admitted gang affiliation evidence to establish the motive for a crime or to show that defendants were acting in concert. . . . In each instance, there was a connection between the gang's purposes or values and the offense committed. In contrast, when there was no connection between a defendant's gang affiliation and the charged offense, admission of the gang evidence was found to be prejudicial error." (citations omitted) (footnote omitted).

intrinsic to the charged crimes of aggravated assault and aggravated battery . . . as it put the crime in . . . context and served to explain why [the defendant] participated in a seemingly unprovoked attack on the victim").

Courts have also found that evidence relating to drug dealing can be intrinsic to the crime charged. *See e.g.*, *United States v. Mitchell*, No. 22-14153, 2024 WL 490151, at *3 (11th Cir. Feb. 8, 2024) ("The district court did not err in admitting evidence of [the defendant's] drug dealing activity because that activity was 'inextricably intertwined' with the offenses he was charged with and was thus intrinsic evidence not subject to Rule 404(b)."); *Priester v. State*, 845 S.E.2d 683, 686 (Ga. 2020) (finding evidence of defendant's drug dealing intrinsic to the crimes charged).

Here, the State's consistent theory of the case at trial was that Mr. Mason participated in Ms. Hawkridge's murder because she was a police informant and, as a Crips gang member and a drug dealer, he despises informants. The State presented evidence demonstrating that Ms. Hawkridge was a police informant and had drug dealings with Mr. Mason. The State also presented evidence from which the jury could reasonably conclude that Mr. Mason had learned that Ms. Hawkridge was an informant. Furthermore, the State presented a social media post depicting a hatred of informants. Both Mr. Mason and Mr. Small commented on the post. Accordingly, this post established a connection between Mr. Small and Mr. Mason. Thus, the evidence regarding Mr. Mason's drug and gang affiliation,

as well as his hatred of informants, was "inextricably intertwined" with the murder and the conspiracy and his connection to Ms. Hawkridge, as these characteristics were "the catalyst for all of the events underlying the charged crime" and the evidence was necessary for a full presentation of the case. *Peete*, 781 F. App'x at 439-40. We, thus, find no error in the circuit court's determination that the evidence presented regarding Mr. Mason's gang and drug affiliations and his general dislike for police informants[20] was intrinsic to the charged crimes.[21]

C. Prior Consistent Statement

Mr. Mason also argues that the circuit court erred by permitting improper hearsay testimony from Ms. Linton, regarding what Ms. Powell told her about the murder, under the guise of a prior consistent statement.

This Court has held that:

[20] To the extent that the evidence regarding Mr. Mason's hatred of informants could be considered inadmissible pursuant to Rule 404(a) of the West Virginia Rules of Evidence (regarding admissibility of character evidence), Mr. Mason failed to assert this argument below or on appeal. Accordingly, we make no determination regarding the applicability of Rule 404(a).

[21] While Mr. Mason briefly suggests that the introduction of this evidence was prejudicial to him at trial, he did not assign as a distinct error that the court failed to properly undertake an analysis pursuant to Rule 403 of the West Virginia Rules of Evidence. Accordingly, we decline to address whether the court conducted a proper Rule 403 analysis.

> Generally, out-of-court statements made by someone other than the declarant while testifying are not admissible unless: 1) the statement is not being offered for the truth of the matter asserted, but for some other purpose such as motive, intent, state-of-mind, identification or reasonableness of the party's action; 2) the statement is not hearsay under the rules; or 3) the statement is hearsay but falls within an exception provided for in the rules.

Syl. pt. 1, *State v. Maynard*, 183 W. Va. 1, 393 S.E.2d 221 (1990). Rule 801(c) of the West Virginia Rules of Evidence defines hearsay as a statement that "the declarant d[id] not make while testifying at the current trial or hearing" that is offered "to prove the truth of the matter asserted in the statement." W. Va. R. Evid. 801(c)(1), (2). Furthermore, pursuant to West Virginia Rule of Evidence 801(d)(1)(B), a statement is not hearsay if a "declarant testifies and is subject to cross-examination about a prior statement," and "the statement . . . is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying[.]"

On appeal, Mr. Mason asserts that Ms. Linton's testimony concerning Ms. Powell's prior statements lacked consistency with Ms. Powell's testimony, failed to satisfy the hearsay exception in Rule 801(d)(1)(B), and, thus, is barred by the general prohibition of hearsay evidence.[22] It is undisputed that prior to Mr. Mason's trial, Ms. Powell provided

[22] Mr. Mason now additionally argues that even if these statements were prior consistent statements, they were improper because Ms. Powell did not make them to Ms. Linton before the motive for fabrication came into being. In Syllabus point 6, in part, of

numerous evolving statements to law enforcement regarding the events surrounding the murder. However, at trial, Ms. Powell testified that Mr. Mason instructed her, by text, when to leave Vixens the night of the murder, she then drove Mr. Small to Ms. Hawkridge's residence, Mr. Small shot Ms. Hawkridge, and she drove Mr. Small from the scene. On cross-examination, Mr. Mason's counsel questioned Ms. Powell about these evolving statements and challenged her credibility, including the fact that she only purportedly implicated Mr. Mason and Mr. Small following her own conviction for Ms. Hawkridge's murder and the State's offer to ask for a reduced sentence in exchange for her cooperation. In response, the State offered Ms. Linton's testimony to confirm that Ms. Powell made statements around the time of the murder that were materially consistent with her trial testimony. While there are slight differences between Ms. Powell's trial testimony and Ms.

State v. Quinn, we held that "in order to be treated as non-hearsay under the provisions of [Rule 801(d)(1)(B) of the West Virginia Rules of Evidence]," the statement "must have been made before the alleged fabrication, influence, or motive came into being." 200 W. Va. 432, 490 S.E.2d 34 (1997). However, Mr. Mason did not make this specific objection to the circuit court below; his sole objection was that the statements were not consistent. Accordingly, we decline to address this argument on appeal. *Cf. Quinn*, 200 W. Va. at 443 n.18, 490 S.E.2d at 45 n.18 ("The record is not clear as to whether the trial court considered the precise issue of *when* T.M. made her statements, in determining that they were non-hearsay prior consistent statements. Appellant's counsel did not specifically object to the temporality aspect of T.M.'s prior consistent statements. That is, counsel did not argue to the court that the statements were not admissible as pre-motive prior consistent statements, because they were made after T.M.'s alleged motive to fabricate arose. To preserve any such alleged error in the statements' admission, counsel should have made a specific temporality objection, to bring to the court's attention the precise reason why counsel contended that the prior consistent statements were post-motive and thus inadmissible hearsay."). We, therefore, limit our inquiry to the consistency issue raised below.

Linton's description of the prior statements, the main elements were consistent. *See United States v. Vest*, 842 F.2d 1319, 1329 (1st Cir. 1988) ("[A] prior consistent statement need not be identical in every detail to the declarant's . . . testimony at trial[.]").[23] Both accounts included Mr. Mason telling Ms. Powell when to leave Vixens, Ms. Powell driving Mr. Small to Ms. Hawkridge's home, and Mr. Small shooting Ms. Hawkridge. Accordingly, we find that the circuit court did not err in determining that these prior statements relayed through Ms. Linton's testimony were consistent with Ms. Powell's earlier testimony, within the meaning of Rule 801(d)(1).

D. Severance of Codefendant's Trial

Mr. Mason contends that the circuit court erred in failing to sever his trial from his codefendant, Mr. Small's trial. As we have consistently held, "[t]his Court will not reverse a denial of a motion to sever properly joined defendants unless the petitioner demonstrates an abuse of discretion resulting in clear prejudice." Syl. pt. 3, *Boyd*, 238 W. Va. 420, 796 S.E.2d 207.

[23] *See also Hilyard v. State*, 523 P.3d 936, 942 (Wyo. 2023), *cert. denied*, 144 S. Ct. 236, 217 L. Ed. 2d 105 (2023) ("However, the declarant's prior statement and trial testimony do not have to be identical. . . . They need only be 'generally consistent[.]'" (alteration in original) (citations omitted)); *Dibello v. State*, 432 S.W.3d 913, 915 (Tex. Ct. App. 2014) ("A prior consistent statement need only be generally consistent with the declarant's testimony." (quotations and citation omitted)).

In the circuit court, Mr. Mason filed a motion to sever in which he argued that he had an absolute right to a separate trial pursuant to an outdated version of Rule 14 of the West Virginia Rules of Criminal Procedure[24] and West Virginia Code § 62-3-8.[25] He relied on the same arguments at a hearing on the motion. Mr. Mason failed to direct the court to any evidence that would be admitted against Mr. Small that would not also be admissible against him. The circuit court denied the severance motion, but advised Mr. Mason that he could file a renewed motion if new grounds developed. Mr. Mason never filed a renewed motion.

[24] Mr. Mason cited a version of Rule 14 that was amended in 2006. The current, amended version of Rule 14, which is applicable to Mr. Mason's trial, grants circuit courts discretion in deciding whether to grant a motion to sever consolidated codefendant trials. *See* Syl pt. 4 *State v. Boyd*, 238 W. Va. 420, 796 S.E.2d 207 (2017) ("Under Rule 14(b) of the West Virginia Rules of Criminal Procedure, if the joinder of defendants for trial appears to prejudice a defendant or the State, the court has discretion to sever the defendants' trials or provide whatever other relief that justice requires.").

[25] *See, e.g., State ex rel. Whitman v. Fox*, 160 W. Va. 633, 643, 236 S.E.2d 565, 572 (1977) (stating, prior to the adoption of the West Virginia Rules of Criminal Procedure, that "our longstanding interpretation of *W. Va. Code*, 62-3-8" has been that "every individual has a right to a separate trial at which the primary focus is upon his individual guilt or innocence"). However, "[t]his Court has plenary authority to promulgate rules of procedure, which have the force and effect of law." *State v. Wallace*, 205 W. Va. 155, 160, 517 S.E.2d 20, 25 (1999). Therefore, upon our adoption of the Rules of Criminal Procedure, they became governing authority for criminal proceedings. Indeed, this Court has consistently held that "[t]he West Virginia Rules of Criminal Procedure are the paramount authority controlling criminal proceedings before the circuit courts of this jurisdiction; any statutory or common-law procedural rule that conflicts with these Rules is presumptively without force or effect." Syl. pt. 5, *id.*, 205 W. Va. 155, 517 S.E.2d 20. Because West Virginia Code § 62-3-8 conflicts with Rule 14, the Rule must prevail. Moreover, we decline Mr. Mason's request that we revisit this precedent.

On appeal, Mr. Mason argues for the first time that the circuit court should have severed the codefendants' trials because, at trial, the State presented testimony of a statement Mr. Small made during an interview with law enforcement. Mr. Mason contends that Mr. Small's statement would not have otherwise been admissible if he had received a unitary trial.

Despite being invited to identify any evidence that would make severance necessary, Mr. Mason did not raise this argument to the circuit court and, therefore, the court never had the opportunity to consider it. This Court has consistently stated that "nonjurisdictional questions not raised at the circuit court level will not be considered [for] the first time on appeal." *State v. Jessie*, 225 W. Va. 21, 27, 689 S.E.2d 21, 27 (2009) (citing *Whitlow v. Bd. of Educ. of Kanawha County*, 190 W. Va. 223, 226, 438 S.E.2d 15, 18 (1993)).[26] Accordingly, we decline to consider Mr. Mason's argument on appeal, as the same was not raised in the circuit court below.

[26] Although not clearly articulated, Mr. Mason also appears to be arguing that his Sixth Amendment right to cross-examination was violated. *See Bruton v. United States*, 391 U.S. 123, 126, 88 S. Ct. 1620, 1622, 20 L. Ed. 2d 476 (1968) (holding that "because of the substantial risk that the jury, despite instructions to the contrary, looked to the incriminating extrajudicial statements in determining petitioner's guilt, admission of [the codefendant's] confession in this joint trial violated petitioner's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment."). *See also Vincent v. State*, 623 S.E.2d 255, 257 (Ga. Ct. App. 2005) ("Since there was no *Bruton* objection at trial, he is foreclosed from raising this claim on appeal." (quotations and citation omitted)). Because we find that Mr. Mason waived this argument, we also need not decide whether Mr. Small's statement to law enforcement was even subject to *Bruton*.

E. Cumulative Error

The final issue raised by Mr. Mason is that he was denied a fundamentally fair trial because of cumulative error. We have found that "a conviction may be set aside where the cumulative effect of numerous errors prevent a defendant from receiving a fair trial, even though any one of such errors standing alone would be harmless error." *State v. Knuckles*, 196 W. Va. 416, 425-26, 473 S.E.2d 131, 140-41 (1996) (per curiam). However, as explained above, none of Mr. Mason's assignments of error are meritorious. Accordingly, the cumulative error doctrine has no application here. *See Knuckles*, 196 W. Va. at 426, 473 S.E.2d at 141 ("[B]ecause we find that there is no error in this case, the cumulative error doctrine has no application. Cumulative error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors."). Therefore, finding no error, we decline to disturb Mr. Mason's convictions and sentence based on cumulative error.

IV.

CONCLUSION

For the reasons explained above, we affirm the circuit court's August 19, 2022 order sentencing Mr. Mason to life imprisonment without mercy for first-degree murder and to a consecutive term of imprisonment for not less than one year nor more than five years for conspiracy.

Affirmed.