

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 23-570

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(Appeal of Final Order in Harrison County Circuit Court Case No. 22-F-207-S)

JEFFREY JOHN PAGLIA,  
A/K/A JEFFREY PAGLIA,  
A/K/A JEFFERY PAGLIA,  
A/K/A JEFFREY J. PAGLIA,  
Petitioner,

v.

STATE OF WEST VIRGINIA,  
Respondent.

**PETITIONER'S BRIEF**

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### **ASSIGNMENTS OF ERROR**

1. The circuit court erred when it, before trial, deemed certain audio and video evidence (“body cam footage”), which contained numerous references to Petitioner’s criminal conduct not related to the instant case, to be *res gestae* evidence and *intrinsic* evidence.
2. The circuit court erred when it denied the Petitioner’s *Motion in Limine to Exclude Multiple Potential Items of Evidence and to Further Order the State to Redact or Mute Certain Audio and Video Evidence* (“body cam footage”) Pursuant to Rule 404(b), Rule 403, Rule 401, and Rule 609(a) of the West Virginia Rules of Evidence.

## **STATEMENT OF THE CASE**

During its September 2022 term, the Harrison County Grand Jury returned a two count Indictment, which started Felony Case No. 22-F-207-3, against the instant Petitioner, Mr. Paglia. Appx. p. 3-4. The Indictment charged Mr. Paglia with having committed two felonies in Harrison County, to-wit: Count One, Grand Larceny, West Virginia Code § 61-3-13(a); and Count Two, Conspiracy to Commit Grand Larceny, West Virginia Code §§ 61-3-13(a) and 61-10-31. Mr. Paglia's co-defendant, Alicia Ann Williams, was charged and convicted in a separate proceeding of one count of Grand Larceny, and was sentenced to not less than one (1) nor more than ten (10) years in prison on or around May 3, 2022.

A preliminary hearing in this case was held before Magistrate Kevin Renzelli in Harrison County Magistrate Court on or around October 6, 2021. The case was bound over to Harrison County Circuit Court on or around that date. Mr. Paglia was indicted by the September 2022 Term of the Harrison County Grand Jury on the above-referenced two count Indictment. *Id.*

On September 30, 2022, counsel for the Petitioner filed a "*Motion in Limine to Exclude Multiple Potential Items of Evidence and to Further Order the State to Redact or Mute Certain Audio and Video Evidence* ("body cam footage") *Pursuant to Rule 404(b), Rule 403, Rule 401, and Rule 609(a) of the West Virginia Rules of Evidence.* After receipt of discovery, the Petitioner had concerns that the "body cam footage" contained numerous references to his criminal past and prior criminal convictions. Particularly, this "body cam footage" contains references to the following facts: (1) that the Petitioner has a probation officer; (2) a conversation is present on the "body cam footage" which contains multiple references to the Petitioner's supervised release status, and the Petitioner was in fact actively on supervised release for a separate offense at the

time of this incident; (3) a subtle reference is made that Petitioner has a history with law enforcement. Appx. p. 8.

After the Petitioner raised these concerns about the “body cam footage” with the State, the State was initially receptive to working with the Petitioner to redact and to appropriately modify the video so that the jury would not hear about these improper references to the Petitioner’s past criminal conduct. To further support this fact, the State, through its counsel below, indicates as such when it filed its February 17, 2023 response to the Petitioner’s *Motion in Limine*, titled: “*State’s Response to Defendant’s Motion in Limine to Exclude Multiple Potential Items of Evidence and to Further Order the State to Redact or Mute Certain Audio and Video Evidence.*” Appx. p. 11-13.

In that response, the State submitted as follows: “[t]he State does not intend to introduce evidence or of his prior convictions in its case in chief or for purposes of attacking the credibility of the defendant . . . unless the defendant opens the door.” Appx. p. 11-13. Further, the State submitted that “[t]he State does not intend on introducing evidence that the defendant was on federal supervised release at the time of the offense and has no issues with redacting the body camera video . . . as requested by counsel . . . . *Id.* However, the State never agreed to redact what Petitioner has previously referenced above as a “subtle reference . . . that Petitioner has a history with law enforcement.” *Id.*

The results of a final pre-trial conference on February 23, 2023 seemingly resulted in the State reversing its own position. Even though the State entered that hearing with the seeming intent of not introducing most of the objected-to material, the Court nevertheless ruled during that hearing that it was *res gestae* evidence, over the objection of the Petitioner. Appx. p. 52-54. Further, the Court denied the Petitioner’s previously filed *Motion in Limine*. Appx. p. 14-16. The

State then failed to redact any of the objected-to material even though it had previously agreed to do so, and even formally indicated its intentions in a written motion response, and played the body cam footage in full at trial over the objection of the Petitioner, references to criminal history, supervised release, and all associated references.

Following a two day Jury Trial on July 10 and 11, 2023, a Harrison County Jury convicted Mr. Paglia on both counts of the Indictment in Felony Case No. 22-F-207-3. Following a sentencing hearing on or around August 23, 2023, Mr. Paglia was sentenced to the following: as to Count One of the Indictment, Grand Larceny, Mr. Paglia was sentenced to the West Virginia Division of Corrects for an indeterminate term of not less than one (1) year, nor more than ten (10) years, from the 18<sup>th</sup> day of August, 2023. Appx. p. 37-41. As to Count Two of the Indictment, Conspiracy to Commit Grand Larceny, Mr. Paglia was sentenced to the West Virginia Division of Corrections for an indeterminate term of not less than one (1) nor more than five (5) years, and it was further ordered that the sentences on these two counts be run concurrent. *Id.*

## **SUMMARY OF ARGUMENT**

The Circuit Court made two critical errors in this matter which undermined the result of the trial. First, the Court erroneously determined that references the Petitioner's criminal history, supervised release status, and current probation officer, were relevant and intrinsic *res gestae* evidence, even though the relevant conviction, in reference to a case involving "Structuring Monetary Transactions to Evade Reporting Requirements, or Conspiracy to Possess with Intent to Distribute and to Distribute Controlled Substances and Controlled Substances Analogues" in the *United States of Jeffrey J. Paglia*, Case Number 1:12CR25-01, was not relevant whatsoever to this case. Appx. p. 11.

This old nearly decade-old federal case involved financial and controlled substances allegations, neither of which are remotely related, or remotely causally linked to this Grand Larceny / Conspiracy to Commit Grand Larceny Indictment – nor did the State offer any evidence of any sort of link at trial. Further, the facts leading to that conviction were, at minimum, over eight years old at the time of the factual circumstances leading to the instant Indictment, as evidenced by the fact that federal case has a 2012 case number.

Second, the Court erred in failing to conduct a proper analysis under Rules 404(b) and Rule 403 of the West Virginia Rules of Evidence. Not only was this evidence simply not relevant – it was substantially outweighed by a danger of unfair prejudice within the meaning of Rule 403. Here, the Circuit Court seemed to suggest that it could be used for some sort of Rule 404(b) purpose – for example, motive. Appx. p. 54. However, the State never provided notice that it intended to introduce Rule 404(b) evidence, nor did it overly pursue this motive theory at trial – in fact, the only written notice the State gave was that it intended *not* to introduce this evidence. Appx. p. 11-12.



These two factors, when viewed together, undermined the trial. Mr. Paglia has a fundamental right to a fair trial, which was violated when the jury was allowed to hear about past criminal conduct and multiple references to it through the introduction of body camera footage, and such conduct which had absolutely nothing to do with the present allegations. Further, this conduct that took place over eight years prior, rendering it both temporally and factually irrelevant.

## ARGUMENT

### **I. The Circuit Court Erred When it Deemed Certain Body Camera Footage, Containing Numerous References to Criminal Conduct Not Related to the Instant Case, to be *res gestae* and *intrinsic* evidence.**

Most fundamentally, a Defendant in a criminal case is entitled to fairness in all proceedings against him. One of the most common sources of fundamental *unfairness* in criminal proceedings arises when a prosecutor chooses to present evidence outside of the four corners of the charging document, particularly when it may deal with criminal conduct to which the Defendant has already answered to, been convicted of, and suffered the consequences for, such as in this case.

The reality cannot be escaped that Rule 404(b) determinations are one of the most frequently appealed in our criminal justice system, and there is good reason for this. Further, when a Court and/or prosecutor gets it wrong, these rulings are also among the largest causes of reversals of criminal convictions. *State v. McGinnis*, W. Va. 147, 153 (1994). This Court has also been consistently crystal clear on this topic on numerous occasions over the years. This Court has said that the admission of collateral crime evidence is highly prejudicial, and that its improper admission has generally held to constitute reversible error. *State v. Edward Charles L.*, 183 W. Va. 641 (1990). See also *State v. Simmons*, 175 W. Va. 656, 658 (1985).

In this case, the Court did not get too much into a Rule 404(b) analysis, even though it clearly needed to. The Court below had the idea that these references to the Petitioner's past criminal conduct, conduct nearly a decade old, was intrinsic to the present case simply because the Petitioner mentioned it, and the Court *theorized* that the Petitioner was using it as an "excuse," and even though there is no causal, factual, or temporal link between the past criminal

conduct and the conduct for which the Defendant was indicted as the result of the May 2021 incident.

This Court has also commented on the *res gestae* doctrine in the context of a criminal case through multiple cases. Importantly, this Court has continually held that other criminal act evidence admissible as part of the *res gestae* or same transaction, **must be confined to that which is reasonably necessary to accomplish such purpose**. State v. Spicer, 162 W. Va. 127 (1978). On some occasions, this Court has found that *res gestae* evidence, even if not introduced as part of the four corners of the charging document, has been properly introduced. For example, in one case, testimony received at trial about events allegedly occurring one to three months prior, in the overall context of a robbery, sexual assault, and domestic violence case, was found by the trial court to be “[a]s part of the fabric of the underlying charge,” further taking it outside the scope of Rule 404(b) analysis. See State v. Dennis, 216 W. Va. 331 (2004).

This Court went on to state that “[e]vents, declarations, and circumstances which are near in time, causally connected with, and illustrative of transactions being investigated are generally considered *res gestae* and admissible at trial. *Id.*, See also Syl. Pt. 3, State v. Ferguson, 165 W. Va. 529 (1980).

Here, a summary of the facts, as germane to this appeal, are as follows. Alicia Ann Williams, the co-defendant, and the instant Petitioner, were present at the Wingate Hotel in Bridgeport, West Virginia, on May 24, 2021. Appx. p. 218. It was established that Mr. Paglia took the co-defendant to the hotel on May 24, 2021. *Id.* It was further established that the co-defendant, Alicia Ann Williams, approached the counter at the Wingate Hotel, and was successful in representing herself to be an Assist Services worker, and thereby illegally obtained at least an iPad and a set of keys to an Assist Services vehicle that neither co-defendant had

permission from Assist Services to occupy. Appx. p. 87. It was further established that Mr. Paglia, the petitioner, was in the general vicinity and in the same room, although not right next to Ms. Williams, when Ms. Williams unlawfully obtained company property. Appx. p. 87-88. From there, it was established that the Assist Services vehicle was observed speeding and otherwise engaging in reckless driving behavior a short time later by a female driver, eastbound, on Route 50 heading west from Bridgeport, West Virginia. Appx. p. 81-83.

At a time later, the vehicle was seen coming back in the general direction of the hotel. Appx. p. 105. Due to the overall circumstances of the 911 call and GPS tracking, Assist Services reported the vehicle as stolen to law enforcement. Appx. p. 177. Law enforcement was successfully able to track this Assist Services vehicle to a Sheetz location off of Stoneybrook Road in Clarksburg, West Virginia. Appx. p. 119.

At the time law enforcement approached the vehicle, Alicia Ann Williams was in the driver's seat, while this Petitioner, Jeffrey Paglia, was in the front passenger's seat. Appx. p. 125. Law enforcement further located some of Alicia Williams' apparent belongings in the vehicle, while there was no evidence of any of Jeffrey Paglia's belongings in the vehicle other than what was directly on his person. Appx. p. 129. Law enforcement also noted damage and a decal removal on the driver's side of the vehicle, while no such removal was viewed on the passenger side. Appx. p. 125.

To support its theory of the case, the State introduced evidence that Jeffrey Paglia stated, when Alicia Ann Williams illegally obtained the iPad and keys, that he made a comment to the effect of "she was going to be late for work," and further sought to establish that it was not credible that Jeffrey Paglia believed Alicia Ann Williams to be a legitimate company worker. Appx. p. 96. Mr. Paglia denied making this statement at trial. Appx. p. 250. Mr. Paglia's position

was that he was misled by Alicia Ann Williams in the same type of way that the hotel desk worker witness was, and that he had no intention of stealing a vehicle, particularly because he would have no need to, and he had access to not less than three vehicles aside from the vehicle involved in this matter. Appx. p. 217.

However, during the traffic stop at the Stoneybrook Road Sheetz, numerous references were made to Mr. Paglia's past and overall criminal history from years ago and which was causally disconnected from the instant case. Appx. p. 310. To be more specific, the body camera footage stated the following.

First: there is a conversation regarding Mr. Paglia's supervised release status almost at the start of the video, at around 0:30, that lasts for about 66 seconds. *Id.* Second: another reference is made approximately between 3:23 and 3:26. *Id.* And, there is a subtle reference to the fact that Mr. Paglia may have experience with law enforcement at 13:45, when an officer tells Mr. Paglia "you know how we are," in reference to steps taken by law enforcement incident to arrest, and given the context, a reasonable juror could infer that Mr. Paglia has a negative past with law enforcement. *Id.* While the Petitioner objected to all three instances, primarily on Rule 404(b) and 403 grounds, it also objected to the Circuit Court's *res gestae* ruling before trial. Appx. p. 55.

It was the fear of the Petitioner all along that the introduction of this causally disconnected evidence would perhaps lead a jury to no longer view Mr. Paglia as a bystander, even if one that knew or should have known that Ms. Williams did not have lawful access or possession of the relevant vehicle, and would instead lead the jury to conclude that 'he must have been up to something.'

However, in the present case, there was no evidence or facts supported that the State *needed* the references to the Petitioner's criminal history and past criminal conduct to establish either the overall story, or to place the events of the day into context. In fact, the references to active supervised release status and the past criminal case had absolutely no bearing on any fact of consequence in this matter, nor did it have any tendency whatsoever to make any underlying fact from the events surrounding May 24, 2021, and May 25, 2021, more or less probable. This evidence is the very definition of *extrinsic* evidence. The jury would have still been able to draw its own conclusions of the facts and circumstances of the incident without hearing that the Petitioner had a criminal history.

This concern was more paramount, because even in the light most favorable to the State, the Petitioner was in more of an assistance/aiding and abetting role at best. It was not really disputed that the co-defendant in this matter essentially drove the action. The co-defendant was the sole person who interacted with a hotel desk clerk to obtain an iPad and keys, and there was no evidence presented that the Petitioner was ever in actual possession of them. The State overly relied on a single statement introduced into evidence that the Petitioner said the co-defendant would be "late for work." To be sure, the jury can make certain credibility determinations, as is their duty, of the relevant witnesses. However, given the fairly minimal direct and circumstantial evidence presented against the Petitioner, this is the exact type of case where concerns of improper use of *res gestae* and Rule 404(b) evidence are at its maximum.

Here, the State relied on statements made in reference to an eight-plus-years-old criminal conviction, and the ongoing federal supervised release status stemming from that conviction. Not only was this evidence not relevant, it was simply not connected to the facts of the days in

question in this case. Further, it was never established that the evidence was *reasonably necessary* to establish any relevant fact in this case.

In fact, the State seemed to at one time, even if tacitly, agree with this premise. Appx. p. 11-13. The State at one time agreed to the minimization or exclusion of the evidence referencing a criminal past, but the record clearly indicates that it changed its position. This evidence was in no way, shape, or form, a part of the fabric surrounding the underlying charge, and it was not referenced in any manner in the Indictment or in the charging documents.

The bell cannot be unrung. The perception of this Petitioner, in the eyes of the jury, may have been called into substantial question the moment that the jury learned about the criminal past. It undermined the result and overall integrity of the trial, and it was clear error to allow its admission, particularly after the State had previously already agreed to redact the evidence.

**II. The Circuit Court erred when it denied the Petitioner's Motion in Limine filed on Rule 404(b), 403, 401, and 609(a) grounds, and further failed to conduct a proper analysis on these grounds.**

Because the “body cam footage” cannot fairly be considered to be *res gestae* evidence, the Court further erred in failing to conduct a proper Rule 404(b) and Rule 403 analysis. Because this evidence cannot be considered *res gestae* and *intrinsic* to the case, but rather *extrinsic*, the State was required to “place the Petitioner on notice of ‘reasonable notice’ of use in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.” See. W. Va. R. Evid. 404(b). Further, it is standard practice in procedure for a Court to conduct an *in camera* hearing to evaluate this evidence. However, the Petitioner concedes that the *in camera* requirements were reasonably met, because the Court still did evaluate this body camera footage prior to and at the February 23, 2023 hearing, with the agreement of the parties.

Regardless, the Court failed to conduct a proper Rule 404(b) or Rule 403 analysis in this case. In fact, the Court seemed to suggest that because it had ruled that the evidence was *res gestae* and part and parcel of the overall case, that no 404(b) analysis was needed.

However, because this evidence cannot be fairly considered *intrinsic* or *res gestae* evidence for the reasons outlined above, being that it is not temporally, causally, reasonably necessary to the prosecution of the instant matter, or factually connected in any way, the Court erred in failing to determine whether it could be properly used for some other Rule 404(b) purpose. In fact, the Court says it did not conduct this analysis specifically on the record. The Court stated as follows: “[w]ell, we’ve got to get to whether it’s intrinsic or *res gestae* first. I think it’s intrinsic and it’s *res gestae*, so I don’t see any reason to exclude any of it.” Appx. p. 54-55. However, it is the Petitioner’s position that the Court failed to recognize that just because evidence is *admissible* under one rule or under one doctrine, does not mean that it may not be *inadmissible* for some other reason.

However, even if the Court had fully explored this analysis, this evidence should have been excluded on both Rule 404 and Rule 403(b) grounds, and the failure to order the State to redact it amounts to an abuse of discretion given the overall facts and circumstances of this case.

### **CONCLUSION**

What this appeal really boils down to is this. Mr. Paglia had a right to a fair trial based solely on the facts and circumstances that took place on or around May 24-25 of 2021. He should not have had to defend himself in whole or in part from his past, and more particularly, his past from 2012 and before, as well as his active federal supervised release status.

The fact that the jury was able to learn about Mr. Paglia’s criminal history was patently unfair in the context of this proceeding, and undermined all confidence in the reliability of the



result at trial. This Court has consistently and repeatedly recognized the impact that collateral crimes and convictions may have on the reliability of criminal trial proceedings, and this case falls directly in a pattern of a type of case where this is a major concern and which gives zero confidence in the result of the proceeding below.

Therefore, the Petitioner requests the following:

- (1) A reversal of the Circuit Court's sentencing order, as entered on or around September 5, 2023.
- (2) That this Court to remand this case back to Harrison County Circuit Court for a new trial, and to also find that the evidence, as introduced, was not properly *res gestae* or *intrinsic* evidence, nor can it be used as Rule 404(b) evidence or otherwise introduced in any further prosecution of this matter.
- (3) Any other relief not specifically requested, that this Court otherwise deems necessary or appropriate in this matter.

Sincerely,

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*Petitioner.*

**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing “PETITIONER’S BRIEF” in the case of State of West Virginia v. Jeffrey John Paglia (No. 23-570) was served upon the State of West Virginia, and more particularly, Mary Beth Niday, Assistant Attorney General, via the West Virginia Supreme Court of Appeals E-Filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure, on this, the 5<sup>th</sup> day of January, 2024.

/s/ CMH

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