IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Appeal No. 23-570

STATE OF WEST VIRGINIA,

Respondent,

v.

JEFFREY JOHN PAGLIA,

Petitioner.

BRIEF OF RESPONDENT

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INTRODUCTION

Petitioner Jeffrey John Paglia fails to allege any claim that entitles him to appellate relief. Contrary to his arguments, the record reveals that the circuit court correctly concluded that Petitioner's statements at the time of his arrest, including minimal references to his prior federal conviction and supervised release or probation status, were admissible as intrinsic evidence which provided context and explained the circumstances leading to the arrest. Because Petitioner was not prejudiced by the admission of the bodycam video evidence, to the extent the circuit court erred in admitting the entirety of the video, such error is harmless. Moreover, as the circuit court found the evidence was intrinsic or res gestae, the jurisprudence of this Court demonstrates that the court was not required to conduct further analysis under Rule 404(b) and it did consider the evidence under Rules 401, 403, and 609 of the West Virginia Rules of Evidence. This Court should reject Petitioner's claims on appeal and affirm the order of the Circuit Court of Harrison County.

ASSIGNMENTS OF ERROR

Petitioner raises two assignments of error in his brief:

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.*

Pet'r's Br. 4.

STATEMENT OF THE CASE

I. Statement of Facts.

In the afternoon of May 25, 2021, Petitioner conspired with his co-defendant, Alicia Ann Williams, to steal a 2020 Ford Escape belonging to Assist Services, LLC.. App. 101:3-5. Assist Services, LLC, headquartered in Blairsville, Pennsylvania, provided traffic control and flagging services for oil and gas utilities in the vicinity of Clarksburg, Parkersburg, and Morgantown, West Virginia. App. 100:5-6, 17-20. In May 2021, Assist Services utilized the Wingate by Wyndham hotel in Bridgeport, West Virginia, for lodging some of its employees. App. 173:4-7. Assist Services arranged for the employees to park the company vehicles in the Wingate parking lot and leave the keys at the front desk of the hotel. App. 173:19-22. The keys were left in a box to the front desk, along with iPads for the crew leaders. App. 173:20-22. The vehicles were numbered, front and back, and the keys had tags corresponding to the vehicle number. App. 174:2-5; 176:23. So, the employees would tell the Wingate front desk which number they needed and whether they needed an iPad issued. App. 174:1-2, 5-6. The policy of Assist Services was that only employees operate the vehicle and no passengers were allowed in the vehicle with them. App. 175:20-22. Smoking and eating were also not allowed in the vehicle. App. 176:1-4. The vehicles were equipped with GPS devices that operated off satellite and cellphone signals. App. 176:14-19. The vehicles featured the company decal on both the driver and passenger sides. App. 176:22-24.

Ms. Williams recently resided at the Wingate and the front desk clerk was familiar with her. App. 86:15-21. In the afternoon on May 25, 2021, Ms. Williams approached the front desk, said she obtained a job through Assist Services, and requested vehicle keys and an iPad. App. 86:9-12. Petitioner came through the door with Ms. Williams and later told her "It's time to go. Let's go. You're going to be late for work." App. 87: 21-24.

Shortly thereafter, the operations manager for Assist Vehicles received a phone call from a concerned citizen that one of the company's vehicles was being driven erratically. App. 101:5-9. He also received multiple text and email notifications that one of the company vehicles, a white 2020 Ford Escape, committed driving infractions, speeding violations, and seatbelt violations. App. 104:19-22. The operations manager reported the incident to 9-1-1 and contacted Julie Ashcraft, the local superintendent for Assist Services. App. 102:8-9, 14-15. Ms. Ashcraft drove to the Wingate and confirmed that all their employees were present at the hotel. App. 177:11-17. So she knew the vehicle was not being driven by a company employee. App. 179:19-24. Ms. Ashcraft began live tracking the vehicle and it ultimately stopped at a Sheetz gas station and convenience store. App. 179:23-24; 180:1-7. She went to the Sheetz, inspected the vehicle, and observed that all the decals and numbers had been removed from the vehicle. App. 180: 6-13; 181:1-3.

Four police officers with the Clarksburg and Bridgeport police departments responded to the Sheetz. Patrolman Helsey wore a bodycam during his encounter with Petitioner and Ms. Williams. *See generally*, App. 118-21. When the officers approached the vehicle, they observed Ms. Williams smoking a cigarette in the driver's seat and Petitioner eating cheese sticks and hot dogs in the passenger seat. App. 123:3-6; 124:23-24; 125:1-4. Officer Helsey spoke with Petitioner who was mostly rude and disrespectful to him. App. 122:14-16. App. 122:17-18. Ms. Williams possessed an iPad from Assist Services that she claimed was hers. App. 122:22. She also claimed that she obtained the vehicle alongside Petitioner and he had been with her the entire time. App. 122:23-24; 123:1-2. The officers observed that someone removed the company decals from the vehicle and found them inside the vehicle. App. 123:10-17; 135:18-21. Officers subsequently arrested Petitioner and Ms. Williams.

II. Indictment, Motion in Limine, Conviction, and Sentence.

In September 2022, a Harrison County grand jury indicted Petitioner in case number 22-F-207-3 on one count of grand larceny and one count of conspiracy to commit grand larceny. App. 3-4. Petitioner filed a motion in limine to exclude or redact certain audio or video evidence from an officer's body cam reflecting Petitioner's statement regarding his probation officer, his supervised release for an unrelated federal offense, and his history with law enforcement. App. 5-10. The State responded that it "does not intend to introduce evidence of [Petitioner's] criminal history or of his prior convictions" in federal court or his federal supervised release, noting "no issues with redacting the body camera video of Officer E. Helsey as requested by" Petitioner. App. 11-12. The State, however, did not agree to redact the video at 13:45, when Petitioner was being arrested, because there were "no references to [Petitioner] being on supervised release" and "this portion places the video into context of the end result of the recovery of the vehicle at Sheetz, [and] demonstrates [Petitioner's] attitude." App. 12.

A hearing on Petitioner's motion occurred in February 2023. *See generally*, App. 42-60. The State asserted that it did "not intent on presenting evidence in its case-in-chief regarding [Petitioner's] underlying federal convictions, as he does not have any conviction for perjury or false swearing that the State could offer into evidence." App. 45:18-22. Along these same lines, the State agreed to redact body cam video evidence of Petitioner's references to his personal information and the fact he is on federal supervised release in its case-in-chief. App. 46:9-15. But the State did not agree to Petitioner's requested redaction of body cam video when Petitioner was arrested that "place[d] into context the full line of communication between [Petitioner] and the officer" App. 46:16-24; 47:1-7. Particularly, the State argued that this body cam evidence was intrinsic evidence of res gestae as it showed "[w]hat transpired at the time of the event, the

investigating officers were conducting an investigation on th[e] vehicle to determine what happened, [and] how the individuals got into that car." App. 53:3-9. So, this evidence demonstrated that Petitioner "had knowledge of what was going on and that he conspired with Ms. Williams to steal [the] vehicle." App. 51:8-10. The circuit court found that the body cam evidence is intrinsic or res gestae and declined to exclude any of it. App. 54:20-22; 55:6-8. So the circuit court denied Petitioner's motion in limine, finding that Petitioner's "supervised release status stemming from his prior federal conviction as referenced on the body camera of law enforcement at the time of the arrest is *res gestae* as intrinsic evidence of the crime charged and will be admissible at trial." App. 15-16. The jury then viewed the video. App. 121:15.

During trial, Petitioner renewed his objection, arguing the footage improperly referenced Petitioner's "supervised release status, probation status, federal criminal history or anything pertaining to that matter." App. 112:2-10. The State responded that the court had "previously made its rulings." App. 112:11-12. Nevertheless, the State asserted that it did not intend "to detail . . . why [Petitioner] was on supervised release." App. 112:12-13. The State further noted that Petitioner called his probation officer himself during the video and argued that his statements "place[d] everything into context." App. 112:13-16. The circuit court admitted the bodycam footage without redaction. App. 112:24; 121:3-15.

The video showed the vehicle did not contain any Assist Services logos and that neither Ms. Williams nor Petitioner were wearing an Assist Services uniform. Ms. Williams's personal belongings were located in the back of the vehicle. Petitioner told the officers that Ms. Williams worked for Assist Services and had an iPad. Ms. Williams, however, did not know the password and was unable to log on. Following Officer Helsey's testimony, the court gave the jury a

cautionary instruction to "not read anything into [the] fact" that Petitioner may have been on supervised release at the time of his arrest. App. 133:7-16.

Following a two-day trial, a jury convicted Petitioner of grand larceny and conspiracy to commit grand larceny. App. 33-35. By order entered September 5, 2023, the circuit court sentenced Petitioner to two concurrent terms of imprisonment of one-to-five years on each of the two counts. App. 39. It is from this order Petitioner appeals.

SUMMARY OF ARGUMENT

I. The circuit court did not abuse its discretion in admitting evidence of Petitioner's conduct at the time of his arrest, including slight references to his prior federal conviction, his supervised release or probation status, and the fact that he reported to a probation officer. The court properly found that this evidence was admissible as contextual evidence explaining the circumstances surrounding Petitioner's arrest and the charged offenses.

If the circuit court committed any error, however, in admitting the evidence as intrinsic or res gestae evidence, any such error is harmless. This is because Petitioner has not and cannot demonstrate any prejudice resulting from the admission. In fact, the evidence supported his overall defense that he would not have committed the charged offenses because he was under federal supervision. Moreover, the other evidence of record presented by the State at trial was more than sufficient to prove Petitioner's guilt even in the absence of the intrinsic evidence.

II. Finally, the circuit court did not abuse its discretion in not conducting further analysis of the intrinsic evidence under Rule 404(b) because the jurisprudence of this Court establishes that such analysis is unnecessary when the evidence is intrinsic. The circuit court did consider the evidence under Rules 401, 403, and 609.

The Court should therefore affirm.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary and this case is suitable for disposition by memorandum decision because the record is fully developed and the arguments of both parties are adequately presented in the briefs. W. Va. R. App. P. 18(a)(3), (4).

STANDARD OF REVIEW

"A trial court's evidentiary rulings, as well as its application of the rules of evidence, are reviewed under an abuse of discretion standard." Syl. Pt. 4, *State v. Rodoussakis*, 204 W. Va. 58, 511 S.E.2d 469 (1998).

ARGUMENT

I. The circuit court properly admitted intrinsic video evidence of Petitioner's arrest. To the extent that the court committed any error, such error was harmless. Moreover, the court was not required to conduct a further analysis under the West Virginia Rules of Evidence because the evidence was intrinsic.

Petitioner's first assignment of error alleges that the circuit court erred in finding that the body cam video footage showing Petitioner's arrest was res gestae or intrinsic evidence because the evidence was not causally, factually, or temporally linked to the charged offenses. Pet'r's Br. 10-15. Petitioner asserts that the circuit court "theorized" that Petitioner was using his then release on probation "as an 'excuse.'" Pet'r's Br. 10. Petitioner is wrong as the evidence was causally, factually, and temporally linked to the ongoing crimes and placed Petitioner's statements in context with his arrest.

A. The circuit court did not abuse its discretion in finding that the evidence surrounding Petitioner's arrest as demonstrated in a bodycam video was intrinsic or res gestae as it provided context to the circumstances surrounding the charged events.

It has long been recognized by this Court that, before one can determine the applicability of Rule 404(b) to the admission of evidence of prior acts, the first task for the court is to determine

if the evidence is 'intrinsic' or 'extrinsic.'" *State v. Dennis*, 216 W. Va. 331, 351, 607 S.E.2d 437, 457 (2004) (quotations and citations omitted). "Intrinsic evidence" is that which is "inextricably intertwined or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged." *Id.* (citations and internal quotation marks omitted). Intrinsic evidence can also be evidence that is "necessary to complete the story of the crime." *State v. McDaniel*, 238 W. Va. 61, 69, 792 S.E.2d 72, 80 (2016). Evidence "pertaining to the chain of events explaining the context, motive, and set-up of the crime," has been found as "properly admitted if linked in time and circumstances with the charged crime, or forms an integral and natural part of an account of the crime, or is necessary to complete the story of the crime for the jury." *Id.* In other words, evidence is admissible as intrinsic evidence if it "furnishes part of the context of the crime," is necessary for a "full presentation of the case," or is "so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its 'environment'" that it is necessary "to complete the story of the crime on trial by proving its immediate context[.]" *Harris*, 230 W. Va. at 721-22, 742 S.E.2d at 137-38.

This showing may be made by a proffer, and when the State's "proffer fits in to the 'intrinsic' category, evidence of other crimes should not be suppressed when those facts come in as *res gestae*—as part and parcel of the proof charged in the indictment." *Dennis*, 216 W. Va. at 351, 607 S.E.2d at 457. The utility of intrinsic evidence is broad; it allows the proponent of the testimony to provide context to the charged offenses, it illustrates the whole story to the jury, and is "appropriate in order to complete the story of the crime on trial by proving its immediate context or the res gestae." *Id.* (citations and internal quotation marks omitted).

This Court has noted the confusion with the use of the term res gestae, citing to Professor Cleckley's findings that "courts have often used the term res gestae in connection with such doctrines as spontaneous exclamation, fresh complaint, and present sense impression." *State v. Young*, 166 W. Va. 309, 315, 273 S.E.2d 592, 597 (1980), superseded by rule by *State v. Sutphin*, 195 W. Va. 551, 466 S.E.2d 402 (1995) (citing Cleckley, *Handbook on Evidence for West Virginia Lawyers*, s 60 (1978)). This Court also explained that "the term res gestae is more generic than particular and includes within its definition four distinct exceptions to the hearsay rule. . . : declarations of present bodily condition; declarations of present mental state and emotion; excited utterances; and declarations of present sense impression." *Young*, 166 W.Va. at 315, 273 S.E.2d at 597 (citing McCormick, *Evidence* § 274 (Cleary, ed., 1972)). The *Young* Court found that res gestae evidence are "verbal acts" which are "an integral part of the transaction" and had to be "made contemporaneously with the transaction." 166 W.Va. at 315, 273 S.E.2d at 597.

This Court has, on numerous occasions, analyzed whether evidence is intrinsic or Rule 404(b) character evidence. This Court has held that evidence of a defendant's prior threats to "kill himself, his landlord, [and] his girlfriend," along with additional evidence that he had made threats to a convenience store clerk and carried a gun, were all properly admissible at trial as intrinsic evidence to prove "context evidence illustrating why the appellant committed this murder." *State v. Hutchinson*, 215 W. Va. 313, 320-21, 599 S.E.2d 736, 743-44 (2004). Because this Court found the evidence was intrinsic, it held that the State was not required to provide a Rule 404(b) notice, and that petitioner's counsel had "no reason to object, and the circuit court had no reason to *sua sponte* exclude this evidence." *Id.* at 321, 599 S.E.2d at 744.

This Court approved the admission of two prior domestic violence incidents between the petitioner and his murder victim as intrinsic evidence as well. *State v. McKinley*, 243 W. Va. 143,

154-55, 764 S.E.2d 303, 314-15 (2014). In reaching this conclusion, this Court reiterated that "[o]ur cases have 'consistently held that evidence which is 'intrinsic' to the indicted charge is not governed by Rule 404(b)." *Id.* (quoting *State v. Harris*, 230 W. Va. 717, 722, 742 S.E.2d 133, 138 (2013)).

Despite Petitioner's contention to the contrary, there is nothing to separate the events leading up to Petitioner's arrest when he was interacting with law enforcement from inside the stolen vehicle from the *res gestae* of the offenses for which he and his co-defendant were tried. The indictment charges Petitioner with grand larceny of the Assist Services vehicle on May 25, 2021. App. 3-4. The bodycam video evidence offered by the State as intrinsic evidence, occurred in the time period specifically identified in the indictment and clearly evidenced Petitioner sitting in the very vehicle he was charged with stealing.

Most significantly, Petitioner was also charged with conspiracy to commit grand larceny. App. 3-4. Thus, the State had to prove that he acted in concert with another. This affiliation with Ms. Williams in the bodycam video showed how this occurred. Though Petitioner testified that he did not leave the Wingate with Ms. Williams, App. 224:4-8, the bodycam video demonstrates that Petitioner shook his head in the affirmative that he was with her all day, including when she picked up the vehicle at the hotel. App. 310 at 10:54-11:02. This continuity of the crime demonstrates that the evidence was causally, factually, and temporally linked to the crimes. Petitioner's argument to the contrary does not provide a basis for this Court to find error in the circuit court's conclusion that the evidence was intrinsic, and that it was properly admissible.

"Remoteness" is typically not a basis to find intrinsic evidence inadmissible. "As a general rule remoteness goes to the weight to be accorded the evidence by the jury, rather than to

admissibility." Syl. pt. 5, *State v. Winebarger*, 217 W. Va. 117, 617 S.E.2d 467 (2005) (citations and internal quotation marks omitted).

> Whether evidence offered is too remote to be admissible upon the trial of a case is for the trial court to decide in the exercise of a sound discretion; and its action in excluding or admitting the evidence will not be disturbed by the appellate court unless it appears that such action amounts to an abuse of discretion.

Id. at syl. pt. 6 (citation and internal quotation marks omitted).

The circuit court addressed the "remoteness" issue when it ruled that the evidence was admissible as intrinsic evidence when it noted that the evidence in question occurred at the time of the arrest. App. 55:6-9. Moreover, the circuit court found that the evidence established Petitioner's "motive because he's trying to build an excuse to say, you know, I didn't do this because I'm on supervised release." App. 54:12-13. This ruling by the circuit court, and this Court's guidance in Syllabus Point 6 of *Winebarger*, leave Petitioner with an exceedingly high bar to meet if he is to prove that the evidence was too remote to be admissible. To be sure, Petitioner cannot meet this burden, as the evidence demonstrates a continuous conspiracy.

As to Petitioner's claim that "causality" or the location of the offenses have any bearing on this determination, such claims are wholly meritless. Pet'r's Br. 10-11. Despite Petitioner's reliance on *Dennis*, the Court therein held that collateral crime evidence "must be confined to that which is reasonably necessary to accomplish such purpose." 216 W. Va. 331, 351, 607 S.E.2d 437, 457 (2004) (citations omitted). Though the circuit court found the video evidence was intrinsic to the crimes charged, the court would not allow the State to inquire into the nature of Petitioner's prior federal charges or his supervised release or probation even after Petitioner essentially opened the door on direct and cross-examination. *See generally*, App. 228-30, 237-38. Petitioner's counsel even conceded that "the defense all along" had been that Petitioner "wanted nothing to do with this because he was on supervised release and he knew he was going to get in

trouble." App. 229:4-9. There is no requirement that "causality" be shown in order for evidence to be properly admitted as intrinsic evidence. This Court has never announced such a requirement, and, if it did, it would effectively eliminate the idea that prior bad acts are not always governed by Rule 404(b).

As the evidence presented was intrinsic to the case, the circuit court did not abuse its discretion in denying Petitioner's motion in limine.

B. To the extent that the circuit court committed any error in finding the evidence was intrinsic, such error was harmless because Petitioner was not prejudiced.

Even if there was error in allowing the body cam evidence, Petitioner cannot show prejudice. The "[f]ailure to observe a constitutional right constitutes reversible error unless it can be shown that the error was harmless beyond a reasonable doubt." Syl. pt. 5, *State ex rel. Grob v. Blair*, 158 W. Va. 647, 214 S.E.2d 330 (1975). "In conducting a harmless error analysis, the inquiry is fact specific." *State v. Byers*, 247 W. Va. 168, 875 S.E.2d 306, 317 (2022) (citing *State v. Blake*, 197 W. Va. 700, 478 S.E.2d 550, 559 (1996) ("Assessments of harmless error are necessarily content-specific."). A review of the record shows that this error was harmless beyond a reasonable doubt.

At trial, the State introduced evidence more than sufficient to prove Petitioner's guilt. A Wingate employee testified that Ms. Williams told her she was employed with Assist Services and requested the keys to the vehicle and an iPad, which the employee gave her. App. 86:9-24. Petitioner was with Ms. Williams at the time of the request and left the hotel with her. App. 87:21-24. Petitioner and Ms. Williams were ultimately apprehended in the stolen vehicle at a Sheetz. *See generally*, App. 118-21. Law enforcement officers with the Clarksburg and Bridgeport police department responded to the Sheetz and discovered Ms. Williams in the driver's seat of the stolen vehicle and Petitioner in the passenger seat of the stolen vehicle. App. 123:3-6; 124:23-24; 125:1-

4. Petitioner testified that he was in the vehicle but was not part of Ms. Williams's plan to steal the vehicle. App. 232:1-3; 240:14-24. The bodycam video, however, demonstrated Petitioner's agreement with Ms. Williams that he was with her all day. Thus, despite Petitioner's testimony, the jury could have reasonably not found Petitioner's testimony credible based on all the other evidence presented by the State. The bodycam video showing Petitioner sitting in the stolen vehicle is quite persuasive.

Moreover, the circuit court did not allow the State to question Petitioner about the federal conviction or supervision, even after Petitioner opened the door. Thus, the fact that he was on federal supervision was not emphasized during trial. Petitioner's counsel, though, stated at trial that his defense was that he would not have committed the grand larceny and conspiracy because he was on federal supervision. App. 229:7-8 ("That's essentially been the defense all along."). Introduction of the evidence actually helped his defense. For these reasons, any error the circuit court may have committed in finding the bodycam evidence was intrinsic to the charged offenses is harmless error.

II. The circuit court was not required to conduct further analysis under the West Virginia Rules of Evidence because the evidence was determined to be intrinsic or res gestae.

To the extent that Petitioner claims in his brief that the circuit court failed to conduct a Rule 401, 403, 404(b), or 609 analysis, such a claim is without merit as the circuit court is not required to conduct such an analysis simply because the State intends to elicit evidence of prior acts. The evidence and the analysis conducted by the circuit court demonstrate that the evidence was indicative of Petitioner's motive to deny his involvement in the charged offenses and to provide context for his arrest. Having determined that the evidence was intrinsic or res gestae, the court was not required to further analyze the evidence under Rules 401, 403, 404(b), or 609. *See*

Hutchinson, 215 W. Va. at 321, 599 S.E.2d at 744 (finding that because the evidence was intrinsic, the State did not need to provide a Rule 404(b) notice); *McKinley*, 243 W. Va. at 154-55, 764 S.E.2d at 314-15 (holding that intrinsic evidence "is not governed by Rule 404(b)").

This Court spoke extensively on intrinsic evidence in *McDaniel*,

> Rule 404(b) only applies to limit the admissibility of evidence of extrinsic acts. Intrinsic evidence, on the other hand, is generally admissible so that the jury may evaluate all the circumstances under which the defendant acted. That is, intrinsic evidence of a crime is admissible without analysis pursuant to Rule 404(b).

238 W. Va. at 69, 792 S.E.2d at 80 (quoting Vol. I, Louis J. Palmer, Justice Robin Jean Davis, Franklin D. Cleckley, *Handbook on Evidence for West Virginia Lawyers*, § 404.04[5][a] (6th ed. 2015). Thus, as the circuit court did not abuse its discretion in finding that the evidence was intrinsic, Rule 404(b) does not apply and the court did not err in failing to consider the evidence thereunder.

Regarding Rules 401 and 403, the circuit court's analysis in finding that the evidence provided context for the crimes and Petitioner's arrest, as well as motive, implicitly finds that the evidence was relevant. Moreover, the court essentially found that the probative value outweighed any prejudicial effect in analyzing that the evidence was intrinsic. The evidence was not mentioned throughout the entirety of the video and provided context for Petitioner's behavior.

Contrary to Petitioner's argument, the circuit court also considered the evidence under Rule 609. During Petitioner's testimony at trial, he twice opened the door to questioning about his federal conviction and supervision. App. 228-30, 237-39. The court, however, declined to allow the State to inquire about the federal conviction and cautioned Petitioner's counsel "not to open the door anymore." App. 228-29, 37-39. Thus, the court properly considered the evidence as impeachment and declined the State's request to inquire about it on cross-examination.

The circuit court, therefore, did not abuse its discretion in failing to consider the intrinsic evidence under Rule 404(b) and it did consider the evidence under Rules 401, 403, and 609.

CONCLUSION

For the foregoing reasons, Respondent requests that this Court affirm the order of the Circuit Court of Harrison County.

Respectfully submitted,

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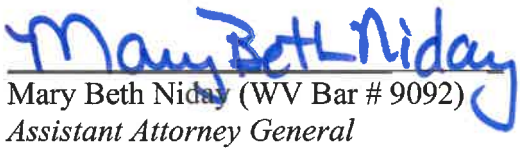
ATTORNEY GENERAL



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STATE OF WEST VIRGINIA,

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JEFFREY JOHN PAGLIA,

Petitioner.

I, Mary Beth Niday, do hereby certify that on the 20th day of February, 2024, I served a true and accurate copy of the foregoing **Respondent's Brief** upon the below-listed individuals via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

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