

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia,
Plaintiff Below, Respondent,

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vs.) No. 23-546

Appeal from Final Order of Berkeley County
Circuit Court (22-F-31)

Rida Shahid Hendershot,
Defendant Below, Petitioner

PETITIONER'S BRIEF

Respectfully submitted,
RIDA SHAHID HENDERSHOT,
Petitioner

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TABLE OF CONTENTS

	<u>Page(s)</u>
ASSIGNMENTS OF ERROR.....	1
STATEMENT OF THE CASE.....	1
SUMMARY OF ARGUMENT.....	8
STATEMENT REGARDING ORAL ARGUMENT.....	9
ARGUMENT.....	9
STANDARD OF REVIEW.....	9
I. The lower court erred and abused its discretion in admitting hearsay, and evidence of alleged prior bad acts of Petitioner, as both intrinsic and pursuant to Rule 404(b) of the Rules of Evidence, which unduly prejudiced the jury against Petitioner.....	11
II. The lower court erred and abused its discretion in admitting the State’s expert on domestic violence, whose testimony was not relevant toward the charges in the indictment, improperly bolstered the State’s hearsay and evidence of alleged prior bad acts of Petitioner, and only confused the jury regarding elements of Petitioner’s ultimate convictions.....	23
III. The lower court erred and abused its discretion by denying Petitioner’s motions for judgment of acquittal, or alternatively, for a new trial, when the evidence was insufficient to support conviction and the jury’s verdict was not supported by the evidence.....	25
CONCLUSION.....	30
CERTIFICATE OF SERVICE.....	32

TABLE OF AUTHORITIES (Page 1 of 2)

<u>Cases</u>	<u>Page(s)</u>
<i>Gentry v. Mangum</i> 195 W. Va. 512, 466 S.E.2d 171 (1995).....	9-10
<i>State v. Baker</i> 230 W. Va. 407, 738 S.E.2d 909 (2013).....	15
<i>State v. Barker</i> 128 W. Va. 744, 38 S.E.2d 346 (1946).....	26
<i>State v. Brewer</i> 204 W. Va. 1, 511 S.E.2d 112 (1998).....	18
<i>State v. Dennis</i> 216 W. Va. 331, 607 S.E.2d 437 (2004).....	14-15
<i>State v. Dolin</i> 176 W. Va. 688, 347 S.E.2d 208 (1986).....	13
<i>State v. Drakes</i> 243 W. Va. 339, 844 S.E.2d 110 (2020).....	26
<i>State v. Guthrie</i> 194 W. Va. 657, 461 S.E.2d 163 (1995).....	10, 25-26
<i>State v. LaRock</i> 196 W. Va. 294, 470 S.E.2d 613 (1996).....	10, 14
<i>State v. McGinnis</i> 193 W. Va. 147, 455 S.E.2d 516 (1994).....	12-15, 22, 25
<i>State v. McKinley</i> 234 W. Va. 143, 764 S.E.2d 303 (2014).....	15
<i>State v. Rollins</i> 233 W. Va. 715, 760 S.E.2d 529 (2014).....	15, 17-18
<i>State v. Spinks</i> 239 W. Va. 588, 803 S.E.2d 558 (2017).....	15
<i>State v. Stuart</i> 192 W. Va. 428, 452 S.E.2d 886 (1994).....	18

TABLE OF AUTHORITIES (Page 2 of 2)

<u>Cases (cont.)</u>	<u>Page(s)</u>
<i>State v. Vance</i> 207 W. Va. 640, 535 S.E.2d 484 (2000).....	10-11
<i>State v. Vilela</i> 238 W. Va. 11, 792 S.E.2d 22 (2016).....	11
<i>State v. Winebarger</i> 217 W. Va. 117, 617 S.E.2d 467 (2005).....	15
 <u>Statutes and Rules</u>	
W. Va. Code § 61-7-15a (2016).....	26
W. Va. R. App. P. 18.....	9
W. Va. R. App. P. 19.....	9
W. Va. R. App. P. 21.....	9
W. Va. R. Evid. 104.....	13
W. Va. R. Evid. 401.....	13, 18
W. Va. R. Evid. 402.....	13, 18
W. Va. R. Evid. 403.....	10, 13, 18
W. Va. R. Evid. 404.....	1, 4-8, 10-15, 21-22
W. Va. R. Evid. 702.....	24-25
W. Va. R. Evid. 804.....	17
W. Va. R. Evid. 807.....	17-18

ASSIGNMENTS OF ERROR

- I. The lower court erred and abused its discretion in admitting hearsay, and evidence of alleged prior bad acts of Petitioner, as both intrinsic and pursuant to Rule 404(b) of the Rules of Evidence, which unduly prejudiced the jury against Petitioner.
- II. The lower court erred and abused its discretion in admitting the State's expert on domestic violence, whose testimony was not relevant toward the charges in the indictment, improperly bolstered the State's hearsay and evidence of alleged prior bad acts of Petitioner, and only confused the jury regarding elements of Petitioner's ultimate convictions.
- III. The lower court erred and abused its discretion by denying Petitioner's motions for judgment of acquittal, or alternatively, for a new trial, when the evidence was insufficient to support conviction and the jury's verdict was not supported by the evidence.

STATEMENT OF THE CASE

This appeal comes from the Berkeley County Circuit Court's "Sentencing Order" (hereinafter "Final Order"), entered on August 21, 2023, which sentenced Petitioner to a determinate fifty (50) years prison, and denied Petitioner's post-trial motions for judgment of acquittal, or alternatively, for a new trial, based upon Petitioner's convictions for felony second-degree murder and felony use of a firearm during commission of a felony, following a jury trial. (AR 586-588, 1575-1649).

On May 25, 2021, Petitioner shot her ex-husband, whom she was residing with, who died as a result. (AR 1-4). She was originally charged with felony wanton endangerment, but upon subsequent investigation, upon re-filed charges, was charged with first degree murder, by criminal complaint and warrant, under Berkeley County Magistrate Court Case 21-M02F-505, and

remanded to jail. (AR 1-5). Probable cause was found at a preliminary hearing, the case was bound over to circuit court. (AR 6). Petitioner subsequently sought to be admitted to bail under Berkeley County Circuit Case 21-B-302, which the lower court denied, and the case was subsequently indicted, and assigned Berkeley County Circuit Case 22-F-31. (AR 7-10, 589-599).

On March 3, 2022, Petitioner was arraigned on this indictment, on felony first degree murder and felony use of a firearm during commission of a felony, and a trial schedule was set. (AR 9-15, 600-606). Subsequently, the case underwent general trial preparation, Petitioner's counsel withdrew from the case, the case was continued, and Petitioner was assigned court-appointed counsel. (AR 16-27, 102). Between arraignment and the pre-trial hearing held on January 19, 2023, the parties filed various pre-trial pleadings, related to suppression issues, evidentiary issues, expert disclosures, proposed witness lists, and prepared for trial. (AR 28-101).

On January 19, 2023, a pre-trial hearing was held to address these various pleadings, where the parties came to agreements regarding many of the pending pleadings, leaving at contention upon conclusion of the January 19, 2023, pre-trial hearing, issues related to primarily to the State's intention to use a domestic violence expert, and the State's intention to admit evidence through testimony and text messages related to Petitioner's alleged prior bad acts related to what the State asserted was domestic violence committed by Petitioner. (AR 219-221, 607-639). The lower court scheduled a continuation of pre-trial proceedings to be heard on February 1, 2023, to further address the issues in contention. (AR 219-221, 636-638).

Between the January 19, 2023, pre-trial hearing, and the February 1, 2023, pre-trial hearing, the parties filed various pleadings related to the issues that remained in contention. (AR 103-218, 222-223). Ahead of the February 1, 2023, pre-trial hearing, the issues still in contention were based upon Petitioner's theory of the case that the shooting of her ex-husband was a tragic accidental

misfire of the firearm at issue and the State's theory of the case that the shooting was intentional and the culmination of Petitioner's domestic abuse toward her ex-husband.

At the February 1, 2023, pre-trial hearing, the lower court heard testimony from two of the State's proposed witnesses at issue regarding the alleged prior bad acts by Petitioner regarding allegations of incidents involving a machete, involving a fork, and involving a screwdriver. (AR 640-695). The lower court also reviewed various text messages proffered by the State to be from messages between the deceased and various individuals regarding allegations previously made by the deceased that Petitioner had previously pointed an AR-15 rifle at him and destroyed doors in his residence while she was intoxicated, as contained within exhibits A through D of the State's most recent Notice regarding admission of what they argued to be intrinsic or 404(b) evidence. (AR 126-177).

The lower court then heard argument of the parties in relation to admission of the text messages contained within these exhibits A through D of the State's Notice, made findings that the proffered testimony and messages related to the alleged AR-15 incident would be admissible as both intrinsic evidence and 404(b) evidence, subject to a limiting instruction, over Petitioner's objections. (AR 224-227, 665-693). Due to time constraints, the remainder of pre-trial issues related to the State's proffer of intent to use evidence they argued was intrinsic to the instant case or admissible as 404(b) evidence were ordered to be addressed the following day, and the lower court schedule another pre-trial hearing for February 2, 2023. (AR 224-227, 692-694).

In the February 2, 2023, pre-trial hearing, the lower court reviewed the remaining exhibits, proffered by the State, labeled E through H, to the State's Notice, consisting of more text messages, and photos, related to the alleged fork incident, alleged screwdriver incident, and alleged doors incidents. (AR 178-211, 554-559, 696-761). The lower court heard argument by the parties, and

ultimately made findings that all alleged incidents of prior bad acts, related to the machete, to the screwdriver, and related to the fork, were admissible as both intrinsic evidence and 404(b) evidence, subject to a limiting instruction, over Petitioner's objections. (AR 554-559, 698-737). The lower court held ruling regarding the alleged doors incident in abeyance pending voir dire of the State's proposed domestic violence expert, which was ordered to be conducted in the future outside the jury's presence. (AR 554-559, 714-717).

Subsequent to the February 2, 2023, pre-trial hearing, the parties prepared for trial and additional pleadings were filed related to voir dire, jury instructions, and a stipulation regarding admission of the autopsy report. (AR 228-263).

Trial commenced on February 7, 2023, lasted five days, and ended with the aforementioned verdict, on February 13, 2023. (AR 264-269, 545, 551-553, 762-1574).

On February 7, 2023, day one of trial, the lower court conducted voir dire, the parties made opening statements, the jury was given general instruction, and the State's case in chief consisted of four witnesses: (1) the mother of the deceased who testified to the relationship between Petitioner and the deceased and her having Petitioner evicted from the residence after the shooting; (2) Petitioner's neighbor who testified to Petitioner running to him for help, asking him to call 911, and he calling 911; (3) the EMT who responded to the scene and testified to the extent of injuries and process of declaring the deceased; and (4) the deceased's uncle, who was also a neighbor, who testified to Petitioner running to his house to seek help. (AR 762-961). State's trial exhibits one through three, and fifty-one, were admitted, consisting of eviction documentation, the 911 call, the EMT report, and the stipulated autopsy report. (AR 271-313, 453-463, 930-931, 937, 943-944, 958-959).

On February 8, 2023, day two of trial, the State's case in chief continued, consisted of four witnesses tied to law enforcement, State's trial exhibits four through forty-eight and Defendant's trial exhibit one were admitted; these exhibits consisted of a jail call made by Petitioner to a relative, the CAD report from the 911 call, pictures taken from the scene, body camera footage from the responding officer and of a walkthrough of the residence, the text messages extracted from both the deceased's phone and Petitioner's phone, and of audio recordings of an interview conducted with Petitioner. (AR 271-273, 314-450, 488-490, 962-1066). State's trial exhibits seventeen through twenty-two, corresponded with text conversations, regarding the previously ruled upon alleged prior bad acts evidence, subject of the issue in contention regarding the State's Notice seeking admission of what they previously argued, and the lower court ruled as admissible evidence as both intrinsic and 404(b) evidence from the pre-trial hearings. (AR 224-227, 362-420, 554-559, 665-693, 698-737, 1027-1032).

On February 9, 2023, day three of trial, the State's case in chief continued, consisted of a continuation of the chief investigating officer's testimony from the prior day, firearms experts for both the State and Petitioner testified, and voir dire was conducted in camera outside the jury's presence of the State's proposed expert on domestic violence, State's trial exhibits forty-nine through fifty-six and Defendant's trial exhibits two through seven were admitted. (AR 271-273, 451-464, 488, 491-523, 1067-1316). The in-camera voir dire of the State's proposed expert on domestic violence was contested, and the lower court ruled that the proposed expert's testimony would be allowed, over Petitioner's objections. (AR 1284-1314). The trial exhibits admitted into evidence consisted of autopsy photos, the autopsy report, the police lab submission regarding firearms evidence, a scene diagram, the police lab forensic report regarding firearms evidence, the magazine and firearm seized from the scene, various text messages, and the table key from the

scene diagram. (AR 271-273, 451-473, 488, 491-523, 1072-1073, 1077-1078, 1123-1139, 1179-1180, 1187, 1202).

On February 10, 2023, day four of trial, the State's case in chief continued, consisted of eight witnesses, the State rested its case, Petitioner made a motion for judgment of acquittal which was denied, after colloquy with the lower court Petitioner elected not to testify, the defense rested its case, jury instructions were debated by the parties after the jury was excused for the day, and the lower court made rulings as to contested jury instructions. (AR 1317-1509). The witnesses called by the State to testify were:

- (1) the deceased's sister who testified to posts on Petitioner's social media pertaining to familiarity with firearms;
- (2) the deceased's younger half-sister who testified to Petitioner's prior statements regarding firearms and familiarity with the same;
- (3) the deceased's step-father regarding interactions with the deceased and Petitioner, the deceased's desire for Petitioner to move out, and Petitioner's statements and/or familiarity with firearms;
- (4, 5, 6) the three witnesses whose testimony was subject of contest between the parties regarding possible intrinsic and/or 404(b) evidence of Petitioner's alleged prior bad acts, who consisted of two of the deceased's friends and one of Petitioner's ex-boyfriends, testified regarding said acts;
- (7) the State's expert on domestic violence, whose qualifications and proposed testimony was subject of contest between the parties, testified; and,
- (8) the deceased's father who testified about interactions with the deceased, his desires, and Petitioner's familiarity with firearms.

(AR 1317-1509).

Through these witnesses on February 10, 2023, State's trial exhibits fifty-seven through seventy were admitted into evidence and depict photos from Petitioner's social media involving her and firearms, and photos of an injury Petitioner is alleged to have previously committed upon the deceased with a fork. (AR 271-273, 474-487, 1323-1326, 1372-1374). The photos, admitted as State's trial exhibits sixty-nine through seventy involved an incident from the previously ruled

upon alleged prior bad acts evidence, subject of the issue in contention regarding the State's Notice seeking admission of what they previously argued, and the lower court ruled as admissible evidence as both intrinsic and 404(b) evidence from the pre-trial hearings.

On February 13, 2023, day five of trial, the jury was given jury instructions by the lower court, listened to closing arguments of the parties, deliberated, and returned the verdict subject of the instant appeal. (AR 526-545, 1510-1574).

Subsequent to trial, the lower court set a sentencing hearing which was continued a few times and ultimately held on August 9, 2023, Petitioner filed post-trial motions for judgment of acquittal and for a new trial, a pre-sentence investigation report was ordered, conducted, and filed, the State responded to Petitioner's post-trial motions and filed a sentencing recommendation, and Petitioner filed letters of support for sentencing consideration. (AR 546-553, 560-584).

On August 9, 2023, the lower court held a post-trial motions and sentencing hearing. (AR 1575-1649). In this hearing Petitioner's post-trial motions for judgment of acquittal, or alternatively, for a new trial were denied by the lower court. (AR 1578-1582). Additionally, after consideration of various witnesses, argument by the parties, and the pleadings previously filed regarding sentencing, the lower court sentenced Petitioner to a cumulative determinate fifty (50) years in prison. (AR 585-588, 1638-1648).

Petitioner now appeals the convictions and sentence stemming from the jury verdict rendered on February 13, 2023, and sentence pronounced on August 9, 2023, as contained within the lower court's order of conviction and Final Order. (AR 545, 551-553, 586-588, 1569-1570, 1642-1643).

SUMMARY OF ARGUMENT

Almost the entirety, if not the entirety, of the evidence presented to the jury, outside the of the alleged prior bad acts evidence, which the lower court erroneously allowed to be admitted, supports an acquittal of any intentional shooting in the instant case, both for the elements of second-degree murder, and for voluntary manslaughter. Regardless, the lower court allowed the jury to hear evidence of alleged unproven prior bad acts out of context, both as intrinsic evidence and under Rule 404(b) of the Rules of Evidence, when this evidence was not proven to involve acts of domestic violence committed by Petitioner, was often inadmissible hearsay, was not connected to the charges in the indictment or intrinsic to the case, was not reliable or relevant to the charges brought against Petitioner, and was unduly prejudicial.

The lower court then further compounded this error by allowing Katie Spriggs, the State's proposed domestic violence expert, to testify as to patterns of domestic violence generally present which leads to lethality, when Ms. Spriggs knew nothing of the facts of the case and should not have been qualified as an expert or allowed to testify. Ms. Spriggs's testimony merely served to improperly bolster the testimony from witnesses Ronald Savage (hereinafter "Savage"), Cody Funkhouser (hereinafter "Funkhouser"), and Melissa Koch (hereinafter "Koch") regarding unproven alleged prior bad acts evidence, which just confused the jury as to the ultimate issues in the case.

This was not a case where the identity of the shooter was in question, the entire case hinged on the intent of Petitioner and whether this was an accidental or intentional shooting, and whether the Petitioner harbored malice toward the deceased if it was intentional. Allowing the State to admit text conversations largely consisting of unproven hearsay, and parade various witnesses who had no knowledge of what occurred in this case, to testify to past unproven events alleged to have

occurred with no relevance toward the whether the shooting was intentional or accidental, served only to confuse the issues to the jury, taint the jury, and prejudice the jury against Petitioner.

Because the lower court erroneously allowed unproven alleged prior bad acts evidence to be admitted, the jury was left with no other conclusion other than Petitioner must be a bad person, and because she is a bad person, she must have committed the crime, which contradicts the entire purpose of Rule 404's restriction on admission of prior bad acts.

The evidence presented to the jury in no way supported a conviction for second-degree murder, much less an intentional shooting, such that no rational jury could have found Petitioner guilty beyond a reasonable doubt of second-degree murder.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner asserts that this case involves assignment of error in the application of settled law, claims an unsustainable exercise of discretion, and a result against the weight of the evidence. Therefore, Petitioner respectfully requests, pursuant to Rule 18 of the Rules of Appellate Procedure, that this matter be scheduled for oral argument pursuant to Rule 19 of the Rules of Appellate Procedure, and that this case would be appropriate for a memorandum decision reversing the lower court's final order under the limited circumstances pursuant to Rule 21(d) of the Rules of Appellate Procedure.

ARGUMENT

STANDARD OF REVIEW

The Court typically reviews a circuit court's ruling regarding general admissibility of evidence, as applied in the instant case to determinations that certain evidence was admissible as

intrinsic evidence, and in regards to the admission of the State’s expert on domestic violence, under an abuse of discretion standard unless it involves an interpretation of the Rule of Evidence, as the Court has stated:

[f]irst, an interpretation of the West Virginia Rules of Evidence presents a question of law subject to *de novo* review. Second, ordinarily a circuit court’s evidentiary rulings are reviewed under an abuse of discretion standard. A party challenging a circuit court’s evidentiary rulings has an onerous burden because a reviewing court gives special deference to the evidentiary rulings of a circuit court.

Gentry v. Mangum, 195 W. Va. 512, 518, 466 S.E.2d 171, 177 (1995).

For evidentiary rulings involving a determination of evidence under Rule 404(b) of the Rules of Evidence, the Court has stated:

[t]he standard of review for a trial court’s admission of evidence pursuant to Rule 404(b) involves a three-step analysis. First, we review for clear error the trial court’s factual determination that there is sufficient evidence to show the other acts occurred. Second, we review *de novo* whether the trial court correctly found the evidence was admissible for a legitimate purpose. Third, we review for an abuse of discretion the trial court’s conclusion that the “other acts” evidence is more probative than prejudicial under Rule 403.

State v. LaRock, 196 W. Va. 294, 310-311, 470 S.E.2d 613, 629-630 (1996).

The standard of review for a general sufficiency of evidence claim, is, “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Syl. Pt. 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

The Court has held that lower court’s decision on a motion for new trial is reviewed under:

a two-pronged deferential standard of review. We review the rulings of the circuit court concerning a new trial and its conclusion as to the existence of reversible error under an abuse of discretion standard, and we review the circuit court’s underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 3, *State v. Vance*, 207 W. Va. 640, 535 S.E.2d 484 (2000).

The Court applies a *de novo* standard of review to denial of a motion for judgment of acquittal; however, the evidence is to be viewed in the light most favorable to the prosecution to determine “whether there is substantial evidence upon which a jury might justifiably find the defendant guilty beyond a reasonable doubt.” *See State v. Vilela*, 238 W. Va. 11, 21, 792 S.E.2d 22, 32 (2016) (citations omitted).

I. The lower court erred and abused its discretion in admitting hearsay, and evidence of alleged prior bad acts of Petitioner, as both intrinsic and pursuant to Rule 404(b) of the Rules of Evidence, which unduly prejudiced the jury against Petitioner.

Petitioner asserts that the lower court’s admission of the alleged prior bad acts evidence, in the form of witness testimony from witnesses Savage, Funkhouser, and Koch, text message exhibits and photograph exhibits as contained within State’s trial exhibits seventeen through twenty-two, and sixty-nine through seventy, did not comport with the Rules of Evidence and was an abuse of discretion. Petitioner’s asserts that this error by the lower court pertains both to the lower court’s findings that the evidence was admissible as intrinsic evidence, as well as admissible as a prior bad act pursuant to Rule 404(b).

The prior bad acts evidence, whether analyzed as intrinsic evidence or under Rule 404(b) was clearly admitted in error to Petitioner’s prejudice. The prior bad acts evidence was related to allegations of five incidents:

- (1) Machete Incident, Petitioner is alleged to have waved a machete around while intoxicated a few months prior to the fatal shooting, when Savage was present, with intention to disrupt a beer pong game that Savage and the deceased were playing;

(2) AR-15 Incident, on or about December 12, 2020, Petitioner is alleged to have pointed an AR-15 rifle at the deceased while intoxicated;

(3) Doors Incidents, prior to December 12, 2020, Petitioner is alleged to have destroyed three doors within the residence she shared with the deceased, while intoxicated;

(4) Fork Incident, on or about August 17, 2020, Petitioner is alleged to have stabbed the deceased with a fork, after the deceased, “grabbed her hand to restrain and drew blood by it because I was so mad;”

(5) Screwdriver Incident, at some date in 2011-2012, Petitioner stabbed a former ex-boyfriend, Funkhouser, who was not the decedent in the instant case, during an argument, when Funkhouser admitted that he would break and throw things during arguments, but could remember no other details regarding this incident.

(AR 119-125).

The pleadings and arguments of counsel, and lower court’s rulings, regarding the admissibility of the alleged prior bad acts evidence, under theories of admissibility as both intrinsic evidence and pursuant to Rule 404(b), is contained within pleadings related to Petitioner’s Motion to Suppress Text Messages and Social Media Posts, the State’s Notice of Intent to Admit Intrinsic Evidence or 404(b) Evidence, and the pre-trial hearings held on February 1, 2023, and February 2, 2023. (AR 28-31, 72-76, 81-90, 103-105, 119-125, 224-227, 554-559, 640-761).

The Court set forth the standard for admissibility of Rule 404(b) evidence in *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994). In the *McGinnis* case, regarding the limited purpose of 404(b) evidence, the Court held:

[w]hen offering evidence under Rule 404(b) of the West Virginia Rules of Evidence, the prosecution is required to identify the specific purpose for which the evidence is being offered and the jury must be instructed to limit its consideration of the evidence to only that purpose. It is not sufficient for the prosecution or the trial court merely to cite or mention the litany of possible uses listed in Rule 404(b). The specific and precise purpose for which the evidence is offered must clearly be shown from the record and that purpose alone must be told to the jury in the trial court’s instruction.

Syl. Pt. 1, *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516.

Further, in the *McGinnis* case, the Court established a test for admissibility of Rule 404(b) evidence, that trial courts must follow before admitting Rule 404(b) evidence, as follows:

[w]here an offer of evidence is made under Rule 404(b) of the West Virginia Rules of Evidence, the trial court, pursuant to Rule 104(a) of the West Virginia Rules of Evidence, is to determine its admissibility. Before admitting the evidence, the trial court should conduct an in camera hearing as stated in *State v. Dolin*, 176 W. Va. 688, 347 S.E.2d 208 (1986). After hearing the evidence and arguments of counsel, the trial court must be satisfied by a preponderance of the evidence that the acts or conduct occurred and that the defendant committed the acts. If the trial court does not find by a preponderance of the evidence that the acts or conduct was committed or that the defendant was the actor, the evidence should be excluded under Rule 404(b). If a sufficient showing has been made, the trial court must then determine the relevancy of the evidence under Rules 401 and 402 of the West Virginia Rules of Evidence and conduct the balancing required under Rule 403 of the West Virginia Rules of Evidence. If the trial court is then satisfied that the Rule 404(b) evidence is admissible, it should instruct the jury on the limited purpose for which such evidence has been admitted. A limiting instruction should be given at the time the evidence is offered, and we recommend that it be repeated in the trial court's general charge to the jury at the conclusion of the evidence.

Id. at Syl. Pt. 2.

The State's assertion was that each, and every, of these instances was "intrinsic to the State's presentation of the case as evidence of escalating domestic violence by the Defendant toward the victim which resulted in his murder." (AR 123). The State further argued that evidence of the Screwdriver Incident, even though not involving the deceased, should be introduced "to show absence of mistake or lack of accident, or in the alternative, to lend support and credibility to this Court's finding that the domestic violence perpetrated against the victim was committed by the Defendant." (AR 123). The State further attempted to draw comparisons to other cases where prior incidents of domestic violence were deemed admissible as either intrinsic evidence or for

404(b) purposes, requested the lower court hold a hearing pursuant to *State v. McGinnis*, and make findings sufficient to allow admission of these five alleged incidents of prior bad acts. (AR 123-124).

Petitioner asserted throughout the pendency of the case that none of these incidents were intrinsic, relevant to either the case or any delineated purpose for admission of 404(b) evidence, were all based on messages which constituted hearsay and may not have occurred at all, and their admission would prejudice Petitioner and confuse a jury. (AR 28-31, 103-105).

Other acts 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,” or it is necessary to a full presentation of the case or to complete the story of the crime. *State v. Dennis*, 216 W. Va. 331, 351, 607 S.E.2d 437, 457 (2004) (citing *State v. LaRock*, 196 W. Va. 294, 312, n. 29, 470 S.E.2d 613, 631 n. 29 (1996)). Here, the State argued that these five incidents were intrinsic to the instant case as inextricably intertwined, a necessary preliminary to murder, or necessary to place the victim’s death in context to the crime; Petitioner argued again that the incidents were not intrinsic as they had nothing to do with murder; the lower court found them intrinsic as prior domestic assault, inextricably intertwined, and necessary to place the victim’s death in context (AR 666, 673-675, 700-708).

The lower court largely incorporated its previous rulings regarding the Machete Incident into the others, without making separate findings and conclusions as to admissibility tailored to each separate and distinct allegation. (AR 224-227, 554-559, 714-717, 729-732, 734-737). For the lower court to properly determine these five incidents were admissible as intrinsic to the crime charged, it is axiomatic that there must be sufficient proof to establish that the events actually

occurred, were relevant to the crime charges and purpose for their admission, and that evidence surrounding these incidents was otherwise admissible through the Rules of Evidence. Even if evidence is intrinsic, it should not be admitted if it improperly invites a jury to convict because of other misdeeds rather than guilt of the crime charged, and still must be admissible under other rules of evidence. *See State v. Baker*, 230 W. Va. 407, 415, 738 S.E.2d 909, 917 (2013).

The State argued, and the lower court relied on, a series of cases that allowed the admissibility of instances of past domestic violence as either intrinsic evidence or 404(b) evidence. (119-125, 224-227, 554-559, 708-710). Among the cases cited by the State, and relied upon by the lower court, for determining that prior instances of domestic violence are admissible as either intrinsic evidence or as 404(b) evidence are, *State v. Rollins*, 233 W. Va. 715, 760 S.E.2d 529 (2014), *State v. Winebarger*, 217 W. Va. 117, 617 S.E.2d 467 (2005), *State v. McKinley*, 234 W. Va. 143, 764 S.E.2d 303 (2014), *State v. Dennis*, 216 W. Va. 331, 607 S.E.2d 437 (2004), and *State v. Spinks*, 239 W. Va. 588, 803 S.E.2d 558 (2017).

All these cases discuss the circuit court performing an in-depth *McGinnis* style hearing, with actual testimony presented, or otherwise admissible evidence regarding the alleged prior acts of domestic violence, or as in *Winebarger*, the brandishing of a gun on a regular basis. By comparison, in the instant case, at least two of the instances of alleged prior bad acts are based upon inadmissible hearsay, and the lower court did not hear testimony or review relevant evidence to establish these events actually occurred outside of the State's proffer regarding their exhibit attachments to their Amended Notice. (AR 640-761).

The testimony from the February 1, 2023, pre-trial hearing by Funkhouser and Savage, only establishes personal knowledge for the Machete Incident and Screwdriver Incident. (AR 647-665). State's Exhibit G to their Amended Notice regarding the Fork Incident could potentially be

considered a party admission; however, there was no testimony from anyone with personal knowledge regarding this message and it must still be placed in context to determine whether it was indeed domestic violence by Petitioner against the deceased, which Petitioner asserts it was not. (AR 195-208).

Petitioner asserts that the lower court's ruling regarding the admissibility of evidence related to at least two of the instances of alleged prior bad acts, the Doors Incident and AR-15 Incident, was erroneous based upon hearsay grounds. (AR 723-738). Specifically, in regards to hearsay, the lower court stated:

I don't believe it's hearsay, that's the Court's first ruling. It falls clearly within a statement of an opposing party that was a present sense-type of comment and evidenced a state of mind, state of mental being at the time. The Court believes that it's reliable. If it is hearsay it is not the kind of hearsay that would be excluded because it is clearly an exception under the overall catchall exceptions to the rules of evidence and does tend to establish an existing state of mind and it is trustworthy even though the Court believes it's not hearsay.

(AR 732-733). The testimony regarding the Machete Incident from Savage was not hearsay because Savage was present and had personal knowledge and observations of what occurred. (AR 647-658). Petitioner's statements regarding the Fork Incident would likely have been admissible as a statement of a party opponent had the State elicited any testimony that Petitioner sent the message and confirmed it came from her phone number, but they failed to do so. Funkhouser testified regarding personal knowledge of the Screwdriver Incident, so his testimony would obviously not be hearsay. (AR 658-665).

However, all testimony and evidence the lower court admitted regarding the AR-15 and Doors Incidents were inadmissible hearsay. Everything regarding these two incidents was based solely upon messages or statements made by the deceased to the other witnesses; thus, hearsay.

In *State v. Rollins*, the Court conducted an in-depth review of an assignment of error related to admission of hearsay related to prior statements involving acts of domestic violence made by a homicide victim, and determined that statements of the victim in *Rollins* fell under a hearsay exception pursuant to Rule 804(b)(5), permitting statements made by decedents in certain scenarios. *See State v. Rollins*, 233 W. Va. 715, 733-736, 760 S.E.2d 529, 547-550. Petitioner argues that this hearsay exception is not applicable to the instant case, and was wrongly decided in *State v. Rollins*, because a criminal trial is not, pursuant to Rule 804(b)(5) of the Rules of Evidence, “actions, suits or proceedings by or against the representatives of deceased persons. . .,” as the State does not bring an action, suit or proceeding by or against a representative of a deceased person, they represent the State of West Virginia in prosecuting crimes.

Additionally, the lower court’s determination that hearsay statements of the deceased falls under an exception for present sense impressions and evidence of state of mind and mental and physical being was erroneous, as there was no proof elicited that these statements from the deceased were made contemporaneously with any of the alleged prior bad acts. Indeed, if the alleged prior bad acts did occur, the messages tend to suggest that they were made within the following day, not contemporaneous with said events. (AR 126-208).

Evidence of state of mind and mental and physical being is not relevant in the slightest toward the State’s intended purpose for admission of these messages, to establish context to the death and establish a lack or absence of mistake. Any admission under the residual hearsay exception would not be applicable because the residual hearsay exception, pursuant to Rule 807 of the Rules of Evidence, is presumptively unreliable, the State did not make a specific showing of particularized guarantees of trustworthiness, and the lower court did not find the declarant’s

truthfulness to be so clear that cross-examination would be of marginal utility. *See* Syl. Pt. 11, *State v. Rollins*, 233 W. Va. 715, 760 S.E.2d 529. (AR 224-227, 554-559, 640-761).

Additionally, even if all five incidents of alleged prior bad acts, are considered intrinsic evidence to the murder charge, they cannot survive the test for relevance, nor be found to be more probative than prejudicial, pursuant to Rules 401, 402, and 403, of the Rules of Evidence. To even get to the test for relevance, it must be proven that the events actually occurred. There was never any admissible evidence produced in any of the pre-trial hearings, outside of hearsay statements, which are inadmissible, regarding at least both the AR-15 and Doors Incidents.

The testimony from Savage clearly meets the threshold to establish an act occurred regarding the Machete Incident. (AR 647-658). The testimony from Funkhouser clearly meets the threshold to establish an act occurred regarding the Screwdriver Incident. (AR 658-665). As the Court held in Syl. Pt. 1, *State v. Brewer*, 204 W. Va. 1, 511 S.E.2d 112 (1998), “factual findings based, at least in part, on determinations of witness credibility are accorded great deference.” (citing Syl. Pt. 3, *State v. Stuart*, 192 W. Va. 428, 452 S.E.2d 886 (1994)).

However, Petitioner asserts that the evidence the lower court heard regarding the Fork Incident was insufficient to establish that this incident occurred, as there was no testimony from any witness presented regarding the Fork Incident from anyone with personal knowledge of the event, no one testified the message was contained within the Petitioner’s phone, no one testified that the phone number associated with the message was the Petitioner’s phone number, and no one testified that the Petitioner sent the message. (AR 640-761).

Even assuming for the sake of argument, that the Court finds the State’s proffer of merely reading text messages into the record to be sufficient evidence to establish that Petitioner made admissions regarding the Fork Incident, absent any witness testimony regarding the same, and

even if the evidence surrounding alleged prior bad acts is intrinsic evidence, to be admissible it must still pass the relevancy and more probative and prejudicial tests.

In this context, the State's argued purpose for the admission of evidence related to these five incidents of alleged prior bad acts was that these acts were inextricably intertwined to murder, to establish context to the death of the deceased, to show a pattern of escalating domestic violence which resulted in murder.

The testimony from the pre-trial hearing regarding the Machete Incident, established that Petitioner picked up a machete when Savage's back was faced to her, that when Savage first saw the machete he was playing beer pong with the deceased, and that Savage had a feeling that Petitioner was trying to mess with them to get them to lose their game. (AR 647-658). This testimony, even if found credible, hardly establishes that Petitioner made any threatening gestures toward the deceased, much less constituted any act of domestic violence.

Savage admits that he felt Petitioner was merely trying to mess with them to make them lose their game, not trying to strike the deceased with the machete, or threatening him in any way. (AR 655-658). As the Machete Incident does not constitute domestic violence, it is not relevant toward any of the State's theories of admissibility and should not have been admitted as evidence. Even if somehow, for the sake of argument the Machete Incident is found to constitute domestic violence, the fact that Petitioner is not alleged to have attacked or threatened the deceased with the machete, should make this incident easily more prejudicial than probative, as it involved a weapon, but no threat or attempt to use the weapon against the deceased.

The Fork Incident was not testified to by anyone with personal knowledge, and only considered by the lower court through hearsay statements or proffer. (AR 640-761). However, even assuming for the sake of argument, that the lower court correctly established the Fork Incident did

occur, the lower court's admissibility determination must still be analyzed under relevancy and prejudicial grounds. The text messages read into the record at the pre-trial hearings by the State's proffer regarding the Fork Incident, clearly establish that Petitioner was defending herself. (AR 186-194, 196-211). Both messages sent by the deceased and Petitioner are consistent in that if it is proven the Fork Incident did occur, that it occurred, because the deceased "grabbed her hand to restrain her and drew blood by it because I was so mad," and "I grabbed the fork after you squished my hand and made it bleed." (AR 189, 204).

This is obviously not domestic violence committed by Petitioner against the deceased, it appears a desperate attempt to escape from the deceased because he was injuring her to the extent that he was making her bleed, and then later joking about it with his friend. (AR 189, 204). Because it was not an act of domestic violence committed by Petitioner, it was not relevant toward any of the State's theories of admissibility, and was error for the lower court to admit. Additionally, admitting pictures of the injury that the Petitioner allegedly inflicted on the deceased in self-defense shows blood, is somewhat gruesome, and admission of the photos is more prejudicial than probative. (AR 209-211).

The testimony from the pre-trial hearing regarding the Screwdriver Incident from Funkhouser establishes a scenario similar to that of the Fork Incident, where Petitioner was thrust into a situation where she was subject to domestic violence and had to defend herself. Funkhouser admitted in his testimony that he would often get into arguments with Petitioner, break and throw things, such as mirrors. (AR 611). If Funkhouser's testimony is considered credible, and that Petitioner stabbed him with a screwdriver approximately ten years prior to the instant case, the testimony before the lower court clearly establishes once again, a situation where Petitioner was

placed in a situation where it appears likely she was the victim of domestic violence from a prior boyfriend, and had to result to violence defensively. (AR 661-662).

The Screwdriver Incident is not relevant in the slightest toward the State's theories of admissibility. This Screwdriver Incident would have occurred around ten years prior to the shooting and not involved the relationship between Petitioner and the deceased at all. The State's theory of admissibility was to establish a pattern of escalating domestic violence between Petitioner and the deceased; therefore, because the deceased wasn't involved in this incident at all, it was error to admit evidence of the Screwdriver Incident on relevancy grounds. A jury hearing Petitioner stabbed an ex-boyfriend over ten years ago is also highly prejudicial against Petitioner and not probative of the State's theory of murder in the slightest. Thus, it was erroneous for the lower court to admit evidence related to the Screwdriver Incident.

Even though the AR-15 and Doors Incidents are based entirely upon inadmissible hearsay as stated above, the State, as proponents seeking to admit evidence regarding these incidents, submitted through proffer, evidence that supports that these incidents did not occur, or alternatively, if they did occur, were not related to the State's proposed theory of admissibility, escalating domestic violence. Thus, it was clearly error and an abuse of discretion for the trial court to admit evidence of these five incidents as alleged prior bad acts, as intrinsic evidence to presentation of the State's case, as charged in the indictment, for murder, and by extension, commission of a felony with use of a firearm.

The analysis, and error committed by the lower court, in admitting evidence of alleged prior bad acts, as Rule 404(b) evidence, subject to the lower court's limiting instruction, is similar to the analysis of the same proposed evidence admitted as intrinsic evidence.

In the instant case, the State originally proposed to offer evidence of these alleged prior bad acts, to show, “motive, opportunity, intent, preparation, plan, absence of mistake, and/or lack of accident.” (AR 73, 120). The Court held in *State v. McGinnis*, that, “[i]t is not sufficient for the prosecution or the trial court merely to cite or mention the litany of possible uses listed in Rule 404(b),” which is precisely what the State originally proposed for admission of this alleged prior bad acts evidence. *See* Syl. Pt. 1, *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516. The lower court held a *McGinnis* hearing regarding the proposed alleged prior bad acts evidence on February 1, 2023, which continued to a second hearing on February 2, 2023. (AR 640-761).

In the *McGinnis* style, pre-trial hearings, the State advised it was seeking admission of the alleged prior bad acts for the limited purpose of proving motive, lack of mistake, and lack of accident, which the lower court erroneously accepted as legitimate purpose for admissibility under Rule 404(b). (AR 224-227, 554-559, 673-674, 677-691, 699-711, 716-717). Presumably, the State limited its proposed admission purposes, to try and get around the requirements set forth in *State v. McGinnis*, which bars admissibility under Rule 404(b) for the “litany of possible uses;” however, it appears the State intended to originally use a shotgun approach to admit this evidence in violation of *State v. McGinnis*, rather than for a specific delineated purpose. Thus, the proposed alleged prior bad acts evidence was not admissible under Rule 404(b), and it was error for the lower court to admit this evidence pursuant to Rule 404(b).

The remainder of the *McGinnis* analysis for admission of evidence largely consists the same analysis for admission of intrinsic evidence set forth above, regarding whether the proposed alleged prior bad acts actually occurred, were relevant to the crime charged, were more probative than prejudicial, and would be otherwise admissible under the Rules of Evidence. *See Id.* at Syl. Pt. 2. The proposed alleged prior bad acts evidence related to the five incidents was not admissible,

as the State did not prove by a preponderance of the evidence that the alleged five incidents, actually occurred, were relevant to the case *sub judice*, were not inadmissible hearsay, nor were more probative than prejudicial. Thus, the lower court's rulings on the admissibility of this evidence was also erroneous and an abuse of discretion, which improperly influenced the jury verdict to the prejudice of the Petitioner.

II. The lower court erred and abused its discretion in admitting the State's expert on domestic violence, whose testimony was not relevant toward the charges in the indictment, improperly bolstered the State's hearsay and evidence of alleged prior bad acts of Petitioner, and only confused the jury regarding elements of Petitioner's ultimate convictions.

Petitioner asserts that the lower court's admission of Katie Spriggs as an expert, "[t]o educate the jury regarding male experiences as the victims of domestic abuse, the cycle of domestic violence, patterns of escalation in domestic violence, how victims of domestic violence respond to ongoing abuse, why victims of domestic violence might not use resistive violence, and the lethality of domestic abuse," was clearly erroneous, an abuse of discretion, served no relevant purpose to the crimes charged, did not assist the trier of fact to understand the evidence or a fact in issue, and only improperly bolstered State's witnesses' testimony and evidence regarding unproven and irrelevant allegations of prior bad acts. (AR 95, 106, 1299-1314).

Pursuant to the State's Expert Witness Disclosure, and related pleadings, the lower court conducted an in camera voir dire of the State's proposed domestic violence expert, Ms. Spriggs, on February 9, 2023, and admitted her as an expert competent to testify on issues generally related to domestic violence as outlined in the State's Expert Witness Disclosure, over Petitioner's objections. (AR 95-101, 106-108, 212-218, 1284-1314). Ms. Spriggs then testified in her capacity as an expert and rendered opinions related to escalation of domestic violence leading to lethality,

immediately following the testimony of witnesses Funkhouser and Savage, and prior to witness Koch, who were called by the State solely to admit evidence of alleged prior bad acts of the Petitioner, unrelated to the case, which should have been deemed inadmissible by the lower court. (AR 1359-1437).

The issue in this case for the jury to decide was whether the shooting which led to the death of the deceased, was intentional or unintentional, and if determined intentional, whether the intentional shooting was done maliciously. By allowing Ms. Spriggs to testify regarding her opinion that domestic violence escalates to homicide, in combination, and sequentially with, witnesses who testified as to unproven alleged prior bad acts purported to be related to instances of domestic violence not relevant to the crime charged, the lower court abused its discretion and erroneously allowed the State to present to the jury evidence that should have been inadmissible, to the Petitioner's prejudice, and confused the issues present in the case for the jury's consideration. (AR 1359-1437).

During voir dire, Ms. Spriggs testified that the organization she was executive director of provided services related to, "[d]irect case management crisis intervention to victims of domestic violence, sexual assault, stalking, and human trafficking," as well as offering, "shelter to victims of domestic violence, sexual assault, stalking and human trafficking." (AR 1286). Ms. Spriggs testified that she had been qualified as an expert in issues of, "[d]omestic violence, sexual assault, and victim response." (AR 1290). During voir dire, the State conceded that Ms. Spriggs did not, "have an opinion about what happened in this case," and that, "she probably knows about ten times more about this case after sitting in this hearing than she did before she testified." (AR 1308-1309). Thus, by the State's own admissions, Ms. Spriggs had no knowledge of the case that could serve

as a basis to, “assist the trier of fact to understand the evidence or to determine a fact in issue,” as required for admission under Rule 702 of the Rules of Evidence.

Any allegations of prior bad acts related to domestic violence were not sufficiently proven or otherwise admissible, from the *McGinnis* hearings held on February 1, 2023, or February 2, 2023, and even assuming for the sake of argument that they were proven by a preponderance of evidence, they were not relevant toward the issues that the jury was to decide. The issue of whether the shooting was intentional or not was clearly something the jury was able to decide on its own without needing to depend on unproven allegations of prior bad acts. The lower court even stated in relation to Rule 702, during Ms. Spriggs’s voir dire, “this Court is only to act as the gatekeeper not to allow a flood of opinions to come in that might be something the jurors can conclude on their own.” (AR 1302).

However, the lower court then did the exact opposite by admitting Ms. Spriggs as an expert competent to testify as an expert to assist the jury in understanding the issues present. Thus, it was clearly error for the lower court to admit Ms. Spriggs as an expert on domestic violence and allow her to testify as to her opinions on domestic violence, which confused the issues presented to the jury and improperly bolstered testimony from witnesses Funkhouser, Savage, and Koch.

III. The lower court erred and abused its discretion by denying Petitioner’s motions for judgment of acquittal, or alternatively, for a new trial, when the evidence was insufficient to support conviction and the jury’s verdict was not supported by the evidence.

Petitioner’s asserts that the evidence elicited at trial was insufficient to support conviction for any intentional homicide, such that the lower court erred and abused its discretion by denying Petitioner’s motions for judgment of acquittal, or alternatively, for a new trial, because the jury’s verdict was not supported by the evidence. Petitioner recognizes the standard of review for a

sufficiency of the evidence challenge is, when the evidence is viewed in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, but asserts this is such a rare case where Petitioner can satisfy this standard. *See* Syl. Pt. 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

The evidence admitted in Petitioner's trial does not support any conclusion that an intentional shooting took place, such that no rational juror should have been able to determine Petitioner guilty beyond a reasonable doubt of second-degree murder, much less voluntary manslaughter, when reviewing the evidence presented. Because a conviction for felony use of a firearm in commission of a felony, under W. Va. Code § 61-7-15a (2016), requires the commission of a felony, this conviction must also be overturned.

Petitioner was indicted on first-degree murder. (AR 9-10). The jury rightfully acquitted Petitioner of first-degree murder. (AR 545). The jury returned a verdict of second-degree murder, which is an intentional, unlawful, and malicious homicide without premeditation or deliberation. *See* Syl. Pt. 2, *State v. Drakes*, 243 W. Va. 339, 844 S.E.2d 110 (2020) (AR 531, 545, 1518-1519). The lower court also instructed the jury as to the elements of voluntary manslaughter and involuntary manslaughter. (AR 531-534, 1519-1521). Voluntary manslaughter is an intentional, unlawful homicide, without malice. *See* Syl. Pt. 3, *State v. Drakes*, 243 W. Va. 339, 844 S.E.2d 110 (2020). For a conviction for first-degree murder, second-degree murder, or voluntary manslaughter, to be supported by the evidence, the State must prove the intent to kill beyond a reasonable doubt.

Involuntarily manslaughter is defined as an unintentional killing caused by a person engaging in an unlawful act or where a person engaged in a lawful act unlawfully causes the death of another. *See* Syl. Pt. 7, *State v. Barker*, 128 W. Va. 744, 38 S.E.2d 346 (1946). The evidence

presented by the State against Petitioner in the instant case does not support any finding of intent to kill beyond a reasonable doubt, such that any rational juror could conclude that Petitioner committed either degree of murder, or voluntary manslaughter. Under the evidence presented, any rational jury should have either found Petitioner guilty of involuntary manslaughter at best, or acquitted Petitioner of all charges.

The State's evidence presented consisted of witness testimony and exhibits, from primarily: (1) neighbors whom Petitioner sought assistance from for the deceased immediately following the shooting; (2) law enforcement and other responders to the 911 call; (3) Petitioner's statements given to law enforcement and other responders; (4) firearms experts; (5) family members of the deceased; (6) witnesses with no knowledge of the events of shooting who testified solely regarding alleged prior bad acts of Petitioner; and, (7) the State's domestic violence expert.

On day one of trial, the jury heard from the deceased's mother who testified to evicting Petitioner following the shooting and previous arguments between Petitioner and the deceased. (AR 924-934). The jury also heard from Petitioner's neighbor that called 911 on her request immediately following the shooting, that Petitioner was upset, that Petitioner was trying to revive the deceased, and that Petitioner was hysterical. (AR 934-941). The jury also heard from the EMT worker that arrived on scene and determined that the deceased had died from the gunshot. (AR 941-946). The jury also heard from Petitioner's other neighbor, the deceased's uncle, who she sought assistance from, who testified to Petitioner being hysterical. (AR 946-953). The exhibits admitted, the eviction paperwork, the 911 call, the EMT report, and the stipulated autopsy report, all support the existence of an accidental shooting where Petitioner was seeking assistance for the deceased, and that there was no intent behind the shooting. (AR 274-313, 453-463).

On day two of trial, the jury heard primarily from law enforcement witnesses. Mr. Roper, an employee from the jail, testified as to admissibility of a jail call made by Petitioner on July 22, 2021, at 2129 hours, between minutes 7.00 and 10.00, where Petitioner stated the gun accidentally went off. (AR 966-970). Dep. Shockey, the responding sheriff testified as to his initial scene investigation, interviews, statements from Petitioner, and photos which he took. (AR 970-1009). Cpl. Funk testified regarding his seizure of the phones from Petitioner and the deceased, as well as cell phone extractions performed and messages contained on the phones. (AR 1009-1043). Dep. Weidman testified as to her scene investigation and interviews with Petitioner. (AR 1043-1063).

The exhibits admitted on day two of trial, the jail call, CAD report from the 911 call, photos taken by Dep. Shockey, body camera footage taken by Dep. Shockey, videos of the scene walk through, videos and pictures taken from Petitioner's phone of her firing guns, text messages contained on the phones, audio recorded statements of Petitioner's interview, and photos of the scene investigation, all support Petitioner's assertions that this was a tragic unintentional shooting. (AR 314-450, 489-490). Petitioner was hysterical in all body camera footage admitted, and states the same in her audio recorded interview. (AR 426-427, 489-490). The text messages extracted from the cell phones contained within exhibits seventeen through twenty-two were not relevant toward the crime charged and should not have been admissible as stated above. Regardless of the admissibility of these texts, none provide any evidence of an intentional shooting. (AR 362-420).

On day three of trial, the jury heard a continuation of Dep. Weidman's testimony, and from the firearms experts retained by both parties. Dep. Weidman continued to testify regarding her scene investigation, the autopsy, evidence processing, further investigation into the text messages, relationship between Petitioner and deceased, and firearms testing. (AR 1069-1191). The firearms experts testified that the gun involved in the fatal shooting was functioning properly, that the

technical terms “accidental” equated to a weapon malfunction and “unintentional” equated to an unintentional pulling of the trigger, that neither expert could posit whether this was an unintentional shooting or not, and regarding various firearms safety procedures. (AR 1191-1285). The exhibits admitted on day three were the autopsy photos and report, the crime lab forensics reports regarding the firearms tests, the scene sketch, the crime lab firearms report, and the firearm and magazine recovered. (AR 451-473, 491-525). None of the evidence produced supported a determination that this shooting was intentional beyond a reasonable doubt.

On day four of trial, the jury heard from various family members of the deceased who testified primarily as to Petitioner’s social media postings involving firearms and familiarity with firearms. (AR 1319-1359, 1437-1443). The jury heard from witnesses Funkhouser, Savage, and Koch, who testified as to the alleged prior bad acts of Petitioner referenced in more detail within Petitioner’s assignment of error related to admission of intrinsic evidence and/or Rule 404(b) evidence. (AR 1359-1394, 1421-1437). The jury also heard from the State’s domestic violence expert, Ms. Spriggs. (AR 1401-1437). The exhibits admitted on day four, consisted of social media posts from Petitioner’s social media accounts primarily related to use and/or familiarity with firearms, and pictures related to the Fork Incident discussed above. (AR 474-487).

On day four of trial, the State rested its case in chief. There was never even a scintilla of evidence presented to the jury to support a conviction for any intentional shooting beyond a reasonable doubt. Upon conclusion of the State’s case in chief, after the jury was excused, Petitioner moved for a judgment of acquittal based upon insufficient evidence, which was denied by the lower court. (AR 1443-1445).

After the jury's verdict was returned, Petitioner filed a Motion for Judgment of Acquittal, or alternatively, a Motion for New Trial. (AR 547-550). On August 9, 2023, these motions were addressed and denied by the lower court. (AR 1578-1582).

Petitioner asserts that it was error for the lower court to deny her motions for judgment of acquittal, as there was insufficient evidence to support any verdict that the fatal shooting in this case was intentional in any way, and that all evidence presented to the jury supports a finding of an unintentional shooting, such that no reasonable finder of fact could have returned a verdict beyond a reasonable doubt to any degree of homicide above involuntary manslaughter.

Additionally, Petitioner asserts that it was error for the lower court to deny her alternative motion, for a new trial, based upon erroneous rulings by the lower court, as it pertains to unproven alleged prior bad acts evidence, compounded by admission of a domestic violence expert, when admission of the same did not comport with the Rules of Evidence, as stated above.

CONCLUSION

WHEREFORE, for the reasons asserted above, Petitioner respectfully requests that this Honorable Court vacate and reverse the lower court's Conviction Order, entered on February 24, 2022, and Sentencing Order, entered on August 21, 2023 (Final Order), and remand the case for entry of an Order granting her Motion for Judgment of Acquittal based upon insufficiency of evidence to sustain her convictions. Alternatively, should the Court not remand this case for entry of an acquittal, Petitioner respectfully requests that this Honorable Court vacate and reverse her convictions and sentence, and remand for a new trial, where the State is prohibited from introducing evidence which is not relevant toward the crimes charged, related to the unproven

alleged prior bad acts referenced above, and from introducing a domestic violence expert for the reasons stated above, and for such further relief as the Court deems proper.

Respectfully submitted,
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**State of West Virginia,
Plaintiff Below, Respondent,**

vs.) No. 23-546

**Appeal from Final Order of Berkeley County
Circuit Court (22-F-31)**

**Rida Shahid Hendershot,
Defendant Below, Petitioner**

CERTIFICATE OF SERVICE

I, Jonathan T. O'Dell, do hereby certify that on December 28, 2023, a true copy of the foregoing Petitioner's Brief and Appendix Record, was served via efilings to all File & Serve participants to the following:

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