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

PETITIONER'S REPLY BRIEF

Respectfully submitted,
RIDA SHAHID HENDERSHOT,
Petitioner

By Counsel

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STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner 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

As stated in Petitioner's Brief (hereinafter "Pet'r's Br."), the standard of review regarding general admissibility of intrinsic evidence, and in regards to the admission of the State's expert on domestic violence, is 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.

Respondent argues in Respondent's Brief (hereinafter "Resp.'s Br.") primarily that the lower court did not err by classifying the prior acts evidence as intrinsic, and went above what was legal required by performing. *See* Resp.'s Br. at 20-22. Respondent's assertions are based upon the premise that the State is allowed to introduce any evidence to support their theory of prosecution,

in order to aid a jury to reach an honest verdict. While this is generally true, prior acts evidence still must be relevant and admissible for a proper reason.

Prior acts evidence, regardless of whether the State attempts to classify said evidence as intrinsic or as Rule 404(b) evidence, should not be admitted if it improperly invites a jury to convict because of other misdeeds rather than guilt of the crime charged. *See State v. Baker*, 230 W. Va. 407, 415, 738 S.E.2d 909, 917 (2013).

Respondent's reliance on *State ex rel. Kitchen v. Painter*, 226 W. Va. 278, 700 S.E.2d 489, (2010), attempts to conflate a motive for murder in the instant case, when the *Painter* case is easily distinguishable. In *Painter*, the State elicited evidence that the petitioner's cultivation of marijuana, and belief that the deceased had stolen marijuana, created a motive for murder. In the instant case, the State didn't adequately prove the prior acts occurred to an extent where it would be relevant toward any reasonable theory of motive for murder, much less a theory involving escalation of domestic violence committed by Petitioner.

While in the instant case, the State did present direct evidence at the pre-trial hearing regarding the "machete" incident by testimony of witness Savage, Respondent discounts that the State's witness, Savage, never stated that Petitioner was trying to strike the deceased. *See* Pet'r's Br. at 19; (AR 655-658). No direct or otherwise properly admissible evidence was admitted in the pre-trial proceedings to prove Petitioner brandished an AR-15, destroyed doors, or stabbed the deceased with a fork in any manner that could not be considered self-defense by the deceased's own admissions. *See* Pet'r's Br. at 19-20; (AR 186-194, 196-211).

Contrary to Respondent's assertions, it was entirely misleading to the jury to deflect to extraneous issues rather than focus on what occurred on the day of the shooting. *See* Resp.'s Br. at 23-24. If the State's theory of admissibility of prior acts evidence was escalating domestic violence

between the deceased and Petitioner, Respondent still fails to show how any incident that happened with a screwdriver eleven or twelve years ago, involving a completely different individual, witness Funkhouser, had any bearing toward any charges in the indictment, and was not designed purely to inflame the jury regarding unrelated and irrelevant alleged prior acts. Instead, the lower court merely allowed the State to parade witnesses with little to no knowledge of alleged unproven prior bad acts, not relevant in the slightest to the charges at issue, in front of the jury, to reach convictions based upon these extraneous issues.

Rule 404(b) is designed to prevent, conviction of a defendant because the jury believes they are a "bad person," rather than upon relevant evidence. *See State v. LaRock*, 196 W. Va. 294, 312, 470 S.E.2d 613, 631 n.27 (1996) The lower court in the instant case allowed the State to essentially exercise the generally disapproved practice known as "shotgunning," which involves admitting an unnecessary quantity of extrinsic bad acts evidence, without first adequately establishing that said prior acts occurred, were relevant toward the charges, and weren't unduly prejudicial. *See State v. Parsons*, 214 W. Va. 342, 351, 589 S.E.2d 226, 235 (2003).

To the extent that Respondent asserts Petitioner "waived" error regarding admissibility of the prior acts evidence by incorporating prior arguments at the pre-trial hearings, and not objecting at introduction of the evidence, this argument ignores that Petitioner's objections were preserved by Petitioner's opposition to introduction of the purported intrinsic and/or 404(b) evidence both in writing and at the pre-trial hearings. *See* Resp.'s Br. at 25-27; (AR 103-105, 612-617). The Court has held, "[a]n objection to an adverse ruling on a motion in limine to bar evidence at trial will preserve the point, even though no objection was made at the time the evidence was offered, unless there has been a significant change in the basis for admitting the evidence." Syl. Pt. 1, *Wimer v. Hinkle*, 180 W. Va. 660, 379 S.E.2d 383 (1989).

Respondent argues that the prior acts evidence, involving the doors, fork, and AR-15 incidents, was not offered to prove the truth of the matter asserted, however, this is precisely what it was admitted for. *See* Resp.'s Br. at 29-30. If prior acts evidence wasn't admitted by the State in an attempt to prove these events took place, then they would have no relevance toward any theory of escalating domestic violence to prove motive, and/or lack of mistake or accident. *See* Resp.'s Br. at 28-29.

Respondent then asserts that the prior acts evidence pertaining to the fork incident falls under a hearsay exception under Rule 803(3) or the residual hearsay exception under Rule 807, of the Rules of Evidence. *See* Resp.'s Br. at 30-31. Under this theory, Respondent argues that the text messages sent by the deceased involving the fork incident as describing a then existing physical condition, without any regard that in the text messages at issue the deceased admits to having, "grabbed her hand to restrain her and drew blood by it because I was so mad," prior to Petitioner allegedly stabbing him with a fork. *See* Resp.'s Br. at 30; *see also* Pet'r's Br. at 19-20; (AR 189, 204). Additionally, the residual hearsay clause under Rule 807 would not be applicable, because there was not a sufficient showing, nor findings by the lower court, to allow admission under Rule 807, in accordance with Syl. Pt. 11, *State v. Rollins*, 233 W. Va. 715, 760 S.E.2d 529 (2014). *See* Pet'r's Br. at 17-18.

Thus, for the reasons stated above and throughout Pet'r's Br., the lower court's ruling on the admissibility of this evidence involving alleged prior acts evidence was erroneous, an abuse of discretion, and 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.

Respondent's assertions regarding the lower court properly admitting Katie Spriggs as an expert on domestic violence are also misplaced and must fail. *See* Resp.'s Br. at 31-34. While lower court's admission of expert testimony is generally afforded wide latitude, such expert testimony was not relevant to the charges to which the jury was to render a verdict. As stated above and throughout Pet'r's Br., the lower court's admission of the prior acts evidence was in error. Thus, allowing an expert to testify regarding general trends of escalating domestic violence, 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 95-96, 106-107, 1299-1314).

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 be incited by and depend on unproven allegations of prior bad acts, much less an expert who served only to bolster otherwise inadmissible prior acts evidence.

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.

The evidence admitted in Petitioner's trial does not support any conclusion that an intentional shooting took place, nor a 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, and, by extension, commission of a felony with use of a firearm.

Respondent focuses on an assertion that State's firearms expert witness, Carper, testified regarding gun safety and the safety mechanisms on the firearm at issue. *See* Resp.'s Br. at 35-37. Petitioner's firearms expert witness, Wentling, testified that he could not deduce whether the firearm was intentionally discharged or not. (AR 1281-1282). While Respondent focuses on this expert testimony from witness Carper, as a practical matter, neither firearms expert would be able to assert whether the firearm was intentionally fired.

Petitioner asserts that it was error for the lower court to deny her motions for judgment of acquittal, and 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 and throughout Pet'r's Br.

CONCLUSION

WHEREFORE, for the reasons asserted above, and as asserted in Pet'r's Br., 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 prior acts evidence which is not relevant toward the crimes charged, as 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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Rida Shahid Hendershot,
Defendant Below, Petitioner

CERTIFICATE OF SERVICE

I, Jonathan T. O'Dell, do hereby certify that on March 15, 2024, a true copy of the foregoing Petitioner's Reply Brief, was both faxed to, and placed in outgoing mail via U.S. Mail to, due to the File & Serve System not allowing for eService, to the following:

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A courtesy copy was also delivered to Respondent's counsel, listed above, via email prior to efiling the same.

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