IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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Docket No. 23-546

STATE OF WEST VIRGINIA,

Respondent,

v.

RIDA SHAHID HENDERSHOT,

Petitioner.

RESPONDENT'S BRIEF

Appeal from the August 21, 2023, Order
Circuit Court of Berkeley County
Case No. 22-F-31

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INTRODUCTION

The Berkeley County Circuit Court properly admitted evidence of Petitioner's prior acts of domestic violence following an evidentiary hearing that spanned two days. The circuit court also properly exercised its discretion in admitting testimony from Katie Spriggs, a witness called by the State during Petitioner's underlying criminal trial to testify as an expert in the area of domestic violence. Finally, the evidence presented by the State was more than sufficient to allow a reasonable juror to conclude that Petitioner was guilty of second-degree murder, and for using a firearm during the commission of a felony. Petitioner's arguments on appeal in this regard center around the weight and credibility determinations the jurors made in finding Petitioner guilty, rather than a lack of evidence sufficient to support a finding that the State had proven each essential element beyond a reasonable doubt. For these reasons, Petitioner's appeal should be rejected, and her convictions affirmed.

ASSIGNMENTS OF ERROR

Petitioner raises three assignments of error in her appellate brief:

1. 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.

2. 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 evidence of alleged prior bad acts of Petitioner, and only confused the jury regarding elements of Petitioner's ultimate convictions.

3. 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.

Pet'r's Br. 1.

STATEMENT OF THE CASE[1]

A. Indictment and Brief Summary of Relevant Facts

A Berkeley County Grand Jury returned a two-count felony indictment on February 16, 2022 charging Petitioner with one count of first-degree murder, and one count of use of a firearm during the commission of a felony. App. 9-10. These charges stemmed from the May 25, 2021 murder of Matt Hendershot, Petitioner's ex-husband with whom she had been residing for several months as she purportedly attempted to get back on her feet following the death of her fiancé. App. 2-3.

Law enforcement was dispatched to Mr. Hendershot's home on May 25, 2021 after Mr. Hendershot's neighbor called 911 to report a shooting. App. 2. When law enforcement arrived on scene, they spoke with Petitioner who acknowledged that she shot Mr. Hendershot with an Ed Brown 1911 9mm handgun. App. 2. Although Petitioner admitted to shooting Mr. Hendershot, she claimed that the shooting was accidental or unintentional, and that it occurred while she and Mr. Hendershot were moving various firearms into Mr. Hendershot's bedroom. App. 2.

While officers initially gave credence to Petitioner's claims and only charged her for recklessly using a firearm, the later learned during subsequent investigations that the Ed Brown 1911 firearm used—specifically, the safety features of the firearm—made Petitioner's claim of an accidental or unintentional shooting unlikely. App. 3. As a result, Petitioner was charged with the first-degree murder of Mr. Hendershot. App. 3.

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[1] Petitioner did not, nor does she on appeal, dispute the evidence that showed she shot and killed her ex-husband, Matt Hendershot, with an Ed Brown 1911 9mm handgun. The dispute at trial was whether Petitioner did so intentionally and with the specific intent to kill. Thus, given the factual disputes during Petitioner's trial, and the voluminous record on appeal, Respondent's Statement of the Case will focus on the facts relevant to the issues on appeal, rather than a general summary of the underlying facts.

B. Relevant Pretrial Issues

The parties engaged in substantial pretrial motions practice after the return of Petitioner's indictment. The pretrial issues relevant to the current appeal involve the State's notice of its intent to introduce evidence of Petitioner's prior acts of domestic violence against Mr. Hendershot and a previous boyfriend as intrinsic evidence or under Rule 404(b) of the West Virginia Rules of Criminal Procedure. App. 72-76. The parties also argued over the admissibility of expert testimony from Katie Spriggs, who was disclosed by the State as an expert witness in the field of domestic abuse and victim response to such abuse. App. 95.

1. Intrinsic/404(b) Evidence

The State filed its first notice of intent to offer intrinsic evidence or, alternatively, 404(b) evidence and identified four incidents it planned to present to the jury: (1) an incident that took place a few months prior to Mr. Hendershot's murder in which Petitioner pointed an AR-15 assault rifle at him during an argument; (2) an incident that took place a few months prior to Mr. Hendershot's murder in which Petitioner brandished a machete while Mr. Hendershot's friend was present and able to observe the incident; (3) an incident that took place in August of 2020 in which Petitioner attempted to stab Mr. Hendershot in the eye with a fork during an argument, only to miss and stab him in the shoulder; and (4) evidence that Petitioner damaged doors inside Mr. Hendershot's home during fits of rage. App. 72-76. Later, the State filed an amended notice identifying a fifth incident it sought to introduce in which Petitioner stabbed a former boyfriend in the arm with a screwdriver in the midst of a verbal argument sometime toward the end of 2011 or beginning of 2012. App. 122-23.

In both notices, the State argued that the evidence it sought to introduce was intrinsic to the charged offenses in that it demonstrated the "escalating domestic violence by the Defendant toward

the victim that resulted in his murder." App. 123. Alternatively, the State argued that even if the Court disagreed that any or all of the prior acts were intrinsic, all of them were admissible pursuant to Rule 404(b) to prove motive, lack of accident, or absence of mistake. App. 123-24, 688.

At the subsequent evidentiary hearing on the prior acts evidence, the State called Ronald Savage who testified that he and Mr. Hendershot were best friends and described their relationship by indicating they were "like brothers." App. 648-49. Mr. Savage testified that on one occasion in March of April of 2021, he was at Mr. Hendershot's home and recalled that Petitioner and Mr. Hendershot were arguing. App. 649-50. Petitioner was doing various things in an apparent attempt to frustrate or annoy Mr. Hendershot, but Mr. Savage was unsure of the reason why. App. 650. While Mr. Savage was not sure of the reason for their arguing, he noted that Petitioner and Mr. Hendershot frequently argued about Petitioner "finding a place because Matt didn't want her in the house anymore 'cause she was being destructive and, I guess, it was a dangerous situation." App. 650. On this particular occasion, Mr. Savage recalled that Petitioner picked up a machete during one of these arguments between her and Mr. Hendershot, and began to waive it "in the air like she was going to use it." App. 650-51. Mr. Savage stated that after the incident, he no longer felt safe in the home and left, and never returned out of fear for his safety. App. 650-51.

Mr. Savage also testified about conversations he had with Mr. Hendershot in which Mr. Hendershot told him that Petitioner had stabbed him with a fork during an argument. App. 651. Mr. Hendershot also sent Mr. Savage photographs of the injuries he sustained as a result of being stabbed by Petitioner. App. 651-52.

At that same hearing, the State also called Cody Funkhouser to testify. App. 658. Mr. Funkhouser testified that he and Petitioner were in a relationship between 2009 and 2012. App. 658. He testified that toward the end of their relationship, they were engaged in a verbal argument

that escalated to Petitioner, "out of [nowhere]," grabbed a Phillips head screwdriver and stabbed him in the back of the arm in the triceps. App. 659-60. Mr. Funkhouser also estimated that the screwdriver went approximately a quarter to half-an inch into his arm, and that he had to physically pull it out. App. 659. When asked what led up to the stabbing, Mr. Funkhouser explained that they were having a typical verbal argument that "escalated on this occasion" to Petitioner stabbing him with a screwdriver. App. 659-60.

The State did not call any additional witnesses for purposes of the evidentiary hearing regarding Petitioner's prior acts of domestic violence. App. 665. For the rest of the incidents, the State noted that it planned to rely on various exhibits attached to its notice and its arguments as to why they were admissible prior acts. App. 665. While the State argued that each of the incidents were intrinsic, it also argued that if they were viewed under the Rule 404(b) analysis, the State argued that the Court should "find by a preponderance of the evidence that the event happened, that it's relevant, and that it is more probative than prejudicial." App. 666. The first issue the State addressed through the exhibits was the incident in which Petitioner pointed an AR-15 at Mr. Hendershot. App. 666. The State explained that the information contained in the exhibits demonstrated that Petitioner "previously brandished . . . an AR-15 style rifle at the victim while drinking." App. 666. The State indicated that the occurrence of the event could be proven in a number of ways, notably, text messages between Mr. Hendershot and Mr. Savage. App. 666-67. The State explained that text messages were photographs on Mr. Savage's phone detailing this specific conversation, and the same text chain was found in Mr. Hendershot's phone during a forensic phone extraction. App. 666-67. The State also advised that Mr. Hendershot had a conversation via text message with another friend, Melissa Koch, that was also supported by

photographs taken of the text messages from Ms. Koch's cell phone, and also from the forensic phone extraction of Mr. Hendershot's phone. App. 667.

The parties then proceeded to review numerous text messages sent between Mr. Hendershot, Ms. Koch, and Mr. Savage detailing the AR-15 incident, as well as the incident in which Mr. Hendershot sent photographs of a damaged door in his home along with an explanation that Petitioner had caused that damage during a fit of rage. App. 667-69. The State also indicated that the exhibits provided show the same text message exchanges from different locations. App. 672. In other words, the State provided the text exchanges as they appeared in Mr. Savages or Ms. Koch's phone, and also those same conversations as they appeared in Mr. Hendershot's phone as recovered during the forensic phone extraction. App. 672.

When asked how the State intends to authenticate these messages, the State explained that both Ms. Koch and Mr. Savage will testify, being that they were parties to the conversations detailed in the exhibits. App. 673. The State also explained that it would have the Sheriff's deputy who performed the phone extraction testify as to the procedures for doing such extractions, and the results of the extraction performed on Mr. Hendershot's phone. App. 673.

While the State explained that its position was that the evidence was intrinsic, it chose to present it as both intrinsic and 404(b) evidence to "be on the safe side," and for purposes of the 404(b) analysis, the State offered the evidence for the specific purpose of proving "motive, lack of mistake, lack of accident." App. 673-74. In this regard, the State explained that while the AR-15 incident was intrinsic "because it is part of a pattern that built up a cycle of domestic violence between the victim and the defendant," it would also be admissible under Rule 404(B) to show motive, lack of mistake, and lack of accident. App. 675. As to the AR-15 incident, the State also pointed to this Court's holding in *State v. Winebarger*, 217 W. Va. 117, 617 S.E.2d 467 (2005), in

which this Court found that evidence that a defendant brandishing a firearm fifteen years prior to the charged offense was admissible to prove the defendant's intent and lack of mistake. App. 675-76.

The Court then began to analyze the evidence, and noted that under 404(b), the first step is for the court to determine whether there is a "preponderance of the evidence that the acts or conduct occurred and that the defendant committed the acts." App. 678-79. The circuit court quoted this Court's jurisprudence and noted that if such a showing has been made, the next step is to determine its relevance pursuant to Rules 401 and 402 of the West Virginia Rules of Evidence. App. 679. After finding the evidence is relevant, the next step is to conduct a balancing test pursuant to Rule 403, and determine whether the probative value of the evidence is outweighed by the risk of unfair prejudice from its admission. App. 679. If all of these thresholds are met, the final step is for the court to provide a limiting instruction to the jury both prior to the admission of the evidence, and again during the final charge to the jury after the close of evidence. App. 679.

As to the AR-15 incident, the circuit court found that the State offered the evidence for a proper purpose of showing motive, lack of accident, or lack of mistake. App. 688. The court also found that the evidence was relevant, because "we're talking about a domestic argument very close in time. We are talking about an argument that occurred between the defendant and the victim. We're talking about the brandishing of a firearm." App. 689. The court also noted that the exhibits provided by the State were sufficient for the court to conclude the State had proven by a preponderance of the evidence that the event occurred and that Petitioner was responsible, at least pending proper authentication at trial. App. 690. As to the 403 balancing test, the Court noted that the requirement is that the probative value cannot be *substantially* outweighed by the risk of unfair prejudice. App. 691. The court reasoned that the probative value of the evidence is not

substantially outweighed by the risk of unfair prejudice, and that it would provide a limiting instruction to the jury regarding the scope of their ability to consider that evidence as further support for its conclusion. App. 691.

As to the machete incident, the circuit court held that it was intrinsic to the charged offenses, and pointed to this Court's holding in *State v. McKinley*, 234 W. Va. 143, 764 S.E.2d 303 (2014), and found that the evidence was "inextricably intertwined not as a single episode but necessary to place the victim's death in context with the history of this tumultuous domestically violent relationship." App. 708. But, the court explained that should this Court disagree with that assessment, the evidence regarding the machete incident was admissible under 404(b), and noted that the State had set forth a specific purpose for its admission to prove motive, lack of accident, or lack of mistake. App. 708. The Court found that, based upon the testimony of Mr. Savage, the State had proven by a preponderance of the evidence that the incident occurred and that Petitioner was the actor. App. 709. The circuit court noted that it was relevant in that the evidence "places this all in context of the [S]tate's theory" that this was an escalation of an ongoing domestically abusive relationship. App. 709. The court concluded that evidence was not unfairly prejudicial, or that the risk of unfair prejudice outweighed the probative value. App. 709. Finally, the court noted that it would provide a limiting instruction to the jury prior to the evidence being placed before the jury. App. 709-10.

The court next turned to the evidence regarding the damage to Mr. Hendershot's doors. App. 710. After going through the text messages, the circuit court noted that its findings and conclusion on the doors issue is the same as its findings regarding the machete incident, but it reserved a final ruling on the admissibility of the evidence until after it had the opportunity to hear

the voir dire of the State's domestic violence expert witness because of the overlap between her anticipated testimony and the issue involving damage to the doors. App. 716-17.

The circuit court then reviewed the text messages regarding the fork incident on the record. App. 718-22, 725-30. The State argued that the evidence was admissible, and that the evidence was not hearsay because Mr. Hendershot was explaining his then existing state of mind or physical condition to a friend. App. 730-31. The state also stated that if it was construed as hearsay, it should fall under the residual exception because of the fact that the conversation was captured from both ends—meaning from Mr. Hendershot's phone and the person with whom he was conversing—and that it is trustworthy evidence regarding a material fact. App. 731.

Here, the Petitioner argued against the admission of this evidence by stating that she would "incorporate all my arguments I made regarding the machete." App. 731. In response, the Court noted that it would incorporate its findings related to the machete incident and find that the fork incident was admissible for the same reasons, and thanked Petitioner and noted that the court felt "this is an excellent way to handle the things we've already hashed out so I appreciate that." App. 731.

The Court also noted that part of the evidence regarding the fork incident was from a text conversation between Petitioner and Mr. Hendershot. App. 732. In this regard, the Court specifically held that the conversation was not hearsay, and that Petitioner's comments in the text exchange "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." App. 732-33. The court also noted that if it was hearsay, it "is not the kind of hearsay that would be able to be excluded because it is clearly an exception under the overall catchall exceptions." App. 733.

The final issue addressed by the court was the prior incident in which Petitioner stabbed Mr. Funkhouser with a screwdriver. App. 734. Both the State and Petitioner argued their respective positions, App. 734-36, and the court ultimately concluded that the evidence was admissible as either intrinsic evidence or pursuant to Rule 404(b), and incorporated its prior findings regarding the machete incident as the same findings for why it was finding the screwdriver incident admissible. App. 736.

2. Expert Witness Katie Spriggs

The other issue Petitioner challenges on appeal involves the State's Domestic Violence Expert Witness. On January 16, 2023, the State filed a disclosure naming Katie Spriggs, BSW, MSW, as an expert witness in the area of domestic violence. App. 95. The disclosure specified that Ms. Spriggs would offer testimony "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." App. 95. The State also stated that Ms. Spriggs' testimony will help the jury understand the evidence or to determine a fact in issue, and that under Rule 702(a) of the West Virginia Rules of Evidence, Ms. Spriggs may offer testimony in this regard upon her qualifications as evidence by her "experience, training, or education." App. 95-96.

The State also noted in its disclosure that "testimony from witnesses and messages both from and between the Defendant and victim and others will show that the Defendant and victim had a longstanding history of emotional abuse, repeatedly rising to the level of domestic assault by the Defendant against the victim." App. 96. The State explained that Ms. Spriggs' testimony would be offered to help the jury understand the nuances and intricacies of a relationship riddled

with domestic violence, and why those who are the victims of domestic violence refuse to take certain actions to prevent the abuse, and how the abuse may escalate to "lethality." App. 96. The disclosure also noted that Ms. Spriggs is qualified from her education, training and "extensive experience counseling approximately 3,000 victims." App. 96.

The parties briefly addressed the State's expert witness disclosure regarding Ms. Spriggs at the February 1, 2023 pretrial hearing, but ultimately concluded that the issue would be addressed via an *in camera* hearing, outside the presence of the jury, prior to Ms. Spriggs' testimony at trial. App. 640, 646.

During the course of the subsequent trial, Ms. Spriggs testified in an *in camera* hearing outside the presence of the jury prior to her trial testimony. App. 1285. During the hearing, Ms. Spriggs testified that she was employed as the executive director at the Eastern Panhandle Empowerment Center ("EPEC"), and that she had held that title for seven years. App. 1285-86. Prior to her current position, Ms. Spriggs testified that she had worked as a sexual assault victim advocate for two years, and then did "prevention" for two years. App. 1286. Ms. Spriggs testified that her employer has been in existence since 1977, and offers services in the form of "[d]irect case management crisis intervention to victims of domestic violence, sexual assault, stalking, and human trafficking." App. 1286. The services offered by EPEC are open to all genders, and Ms. Spriggs testified that she regularly works with men who are victims of domestic violence. App. 1287-88. Additionally, Ms. Spriggs testified that she supervises the entire program at EPEC, that she trains every staff member of the facility, and has daily direct contact with domestic violence victims. App. 1287-88. She also testified that the domestic violence shelter in EPEC serves approximately fifteen men each year. App. 1288.

As to her educational background, Ms. Spriggs testified that she holds a Masters Degree and Bachelor's degree in social work. App. 1288-89. She received at least forty-hours of training in areas such as domestic violence, "specifically around lethality indicators." App. 1289. She explained that the training includes discussions and training on identifying indicators of lethality through identifying the specific tactics used by abusers, how abusers maintain their power and control over a victim, and training as to how different ages and genders experience trauma, and how certain ages and genders perpetuate or perpetrate trauma. App. 1289.

Ms. Spriggs testified that she has provided training to the public and law enforcement numerous times regarding domestic violence. App. 1289-90. This included a training she had provided not long before her trial testimony involving domestic violence lethality indicators that was open to law enforcement officers, prosecutors, community service provides and the general public. App. 1290.

Ms. Spriggs also testified that she had been previously qualified as an expert witness in various circuit courts throughout West Virginia in the fields of domestic violence, sexual assault, and victim response. App. 1290. Ms. Spriggs also explained that her facility serves approximately 1,200 to 1,400 individuals a year, with about ten percent of those individuals being men. App. 1297-98.

The circuit court began its analysis into the admissibility of Ms. Spriggs' testimony by reading Rule 702(a) of the Rules of Evidence, and noted that the testimony of Ms. Spriggs was "not specific to this case, but is talking in what typically happens. Why domestic abuse sometimes is not handled in a way that those not the victim of domestic violence, of assault, might otherwise react." App. 1310-11. The court also noted some of the evidence presented at trial that would seem odd or unusual behaviors for one who is the victim of domestic abuse. App. 1311. In

particular, the lack of an attempt to contact the police, the lack of Mr. Hendershot beginning eviction proceedings to remove Petitioner from his home, and even Mr. Hendershot apologizing to Petitioner for eating food that she had left behind. App. 1311.

The circuit court concluded that Ms. Spriggs was qualified to offer the proffered testimony based upon her knowledge, training, and experience, and that her testimony would be helpful to the jury by explaining the seemingly inconsistent or incongruent behaviors of Mr. Hendershot, despite the evidence that he was a victim of domestic abuse. App. 1311-12. The circuit court noted, however, that Ms. Spriggs would not be permitted to "render any expert testimony on what actually happened on that day that the victim was found dead." App. 1312. The circuit court also held that Ms. Spriggs' testimony "will be helpful to the jury in understanding the context of those pieces of evidence that have already been admitted . . . pertaining to past incidences of what we could probable agree would be identified as forms of domestic violence. App. 1312.

C. Trial Evidence

Petitioner's jury trial began on February 7, 2023. App. 762. Consistent with the State's theory of the case, the evidence demonstrated that Petitioner and Mr. Hendershot were married in 2013, but divorced approximately five years later in 2018. App. 924-25. Petitioner and Mr. Hendershot lived apart after the divorce, and Petitioner eventually became engaged to another individual. App. 925-26. When that person passed away, Petitioner asked Mr. Hendershot if she could live with him on a temporary basis as she got back on her feet. App. 925-26. Mr. Hendershot agreed, and Petitioner moved in with him in the summer months of 2020. App. 925-26.

Witnesses testified that after Petitioner moved in, Mr. Hendershot became more frustrated with her continued presence at his home when it became clear that she was not going to move out as quickly as planned. App. 927-28. Petitioner and Mr. Hendershot did not get along, and they

argued frequently. App. 926-27. As time passed and Mr. Hendershot's patience grew thin, he began discussing options with friends and family to have Petitioner removed from his home, particularly through eviction proceedings. App. 928. But prior to Mr. Hendershot instituting these eviction proceedings, he was shot in the face and killed by Petitioner. App. 928.

At trial, Petitioner did not dispute the State's allegation that she shot Mr. Hendershot in the face with an Ed Brown 1911 9mm handgun, and that Mr. Hendershot died as a result of his injuries. The primary dispute was over Petitioner's intent when the fatal bullet was fired. In this regard, perhaps the most critical evidence elicited by the State came from the testimony of Calissa Carper who testified for the State as a firearms expert. App. 1196-1201. Ms. Carper testified that the 1911 handgun Petitioner used to kill Mr. Hendershot possessed numerous safety features designed to prevent accidental or unintentional discharges. App. 1203. In particular, the handgun utilized an exposed hammer that had to be fully cocked in order to fire. App. 1204. In addition to the gun being fully cocked with a live round in the chamber, the firearm had two additional manual safeties that had to be disengaged before a round could be fired. App. 1203-04. First, the gun had a thumb safety on the back of the gun that the user had to manipulate with their thumb to engage and disengage. App. 1203-04. Also, the gun had what is called a "grip safety," that is on the back side of the gun's handle, and that is disengaged when the user grips the firearm and the safety is depressed by the pressure from the user's palm on the back of the firearm. App. 1203-04. The gun will only fire once the hammer is fully cocked, and the two manual safeties are disengaged simultaneously with the trigger being pulled. App. 1210-11.

Mr. Carper also tested the firearm to assess whether it could have accidentally discharged without the trigger being pulled. App. 1221. Throughout her testing, Ms. Carper was unable to

cause an accidental discharge of the firearm, and she concluded that the firearm was in proper working order and functioned as it was intended. App. 1224-28.

In addition to the testimony from Ms. Carper detailing the unlikelihood that the firearm accidentally discharged, the State also called witnesses who testified that Petitioner was intimately familiar with various firearms. App. 1322-32. Witnesses testified that Petitioner would often show her various firearms to those who visited her and liked to talk about her passion for going to the shooting range and firing the guns. App. 1340-41. The jury was also shown various social media posts made by Petitioner detailing her affinity for firearms, and videos of herself at the shooting range. App. 1322-41.

In addition, various witnesses testified to the hostility between Petitioner and Mr. Hendershot in the months leading up to the murder. App. 1344-45. On the one hand, witnesses testified that in the days leading up to Mr. Hendershot's murder, he had expressed, in no uncertain terms, that he wanted Petitioner out of his home. App. 1345. On the other hand, the State also presented various pieces of evidence demonstrating the numerous instances of physical violence Petitioner directed toward Petitioner. Ronald Savage testified, after the circuit court gave the jury a limiting instruction, that in the months prior to the murder, he observed Petitioner brandish a machete in the midst of an argument between she and Mr. Hendershot. App. 1365-66, 1368-69. Mr. Savage also testified to conversations he had with Mr. Hendershot via text message in which Mr. Hendershot described an incident in which Petitioner stabbed him in the shoulder with a fork, along with photographs of the injuries he sustained. App. 1372-73. Mr. Savage also recalled a conversation in which Mr. Hendershot told him that Petitioner pointed an AR-15 rifle at him the night prior during an argument, and how she had damaged doors in his home in a rage. App. 1424-25. The jury also heard from Melissa Koch who testified, also after a limiting instruction

was read to the jury, to conversations she had with Mr. Hendershot regarding those same incidents. App. 1419-28.

After the State rested its case, App. 1443, Petitioner made a cursory motion for a judgment of acquittal, asserting only that the State had failed to present sufficient evidence without offering any specific argument for what the State had failed to prove. App. 1443-44. The circuit court denied Petitioner's motion. App. 1444-45. Petitioner then rested her case without testifying in her defense or presenting evidence.[2] App. 1448.

The parties engaged in an extensive charge conference prior to the reading of the final charge to the jury. App. 1448-1508. During the reading of the final charge to the jury, the circuit court instructed the jury as to the expert witness testimony it had heard, and instructed the jurors that expert testimony is "no more conclusive than the testimony of other witness." App. 1530-31. The circuit court also provided the jury with another instruction covering the prior acts evidence, which instructed the jury that the evidence subject to those limiting instructions were "not admitted as proof of the defendant's guilt on the current charges." App. 1531-32. The circuit court explained that the evidence was "admitted for a limited purpose only and it may be considered by you only in deciding whether a given issue or element relevant to the present charges has been proven." App. 1532. The circuit court also explained that the prior acts evidence was offered to prove "motive, absence of mistake, and lack of accident," and that it was not to be considered for purposes of proving "other matters such as the character of the defendant, whether the defendant

[2] Petitioner did present testimony from her own firearm expert who testified immediately after Ms. Carper. App. 1254. The jury was advised that Petitioner's expert witness was being called out of order for judicial economy purposes, and advised that the expert was testifying on behalf of the defendant, even though the witness was called in the midst of the State's case-in-chief. App. 1253-54.

is a bad person or whether the defendant had the propensity or the disposition to commit the crimes charged." App. 1532.

The jury later returned guilty verdicts for second-degree murder, a lesser-included offense of first-degree murder as charged in the indictment, and use of a firearm during the commission of a felony. App. 545, 1569. The circuit court entered its conviction order on February 24, 2023. App. 551-53.

The Petitioner's post-trial motions for judgment of acquittal and for a new trial were similarly sparse in arguments to the motion for judgment of acquittal made during the trial. App. 547-49. Neither contained a single argument for why either motion should be granted. App. 547-49. During the subsequent sentencing hearing, Petitioner offered no additional argument, and essentially stated that the motions were filed as a formality to preserve issues for appeal. App. 1579-80. The circuit court denied both motions, and noted that the fact that the jury found Petitioner guilty of the lesser-included offense of second-degree murder demonstrated that they considered the evidence, and weighed, at least some of it, in Petitioner's favor. App. 1580-82.

Petitioner was sentenced to a forty year term of incarceration for her second-degree murder conviction, and a consecutive ten-year term for her use of a firearm during the commission of a felony conviction. App. 587-88. The circuit court entered its sentencing order on August 21, 2023, App. 586-87, and it is from this order that Petitioner now appeals.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary pursuant to Rule 18(a)(4) of the West Virginia Rules of Appellate Procedure as the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument. This case is appropriate for disposition by memorandum decision.

SUMMARY OF THE ARGUMENT

The circuit court did not err when it ruled that Petitioner's previous instances of domestic violence were admissible at her jury trial. The evidence was presented as intrinsic evidence, which the circuit court found was appropriate after an evidentiary hearing on the issue. The circuit court, however, went well beyond that which it was required to do, and analyzed the evidence also under a Rule 404(b) analysis, holding that each prior act would be admissible under Rule 404(b). The circuit court provided limiting instructions for each prior act, both before the relevant testimony and in the final charge given to the jury. For these reasons, Petitioner's claims that the circuit court erroneously admitted the evidence of her prior acts of domestic violence should be rejected.

The circuit court also committed no error by allowing the expert testimony of Katie Spriggs, who testified as to the intricacies and nuances of relationships plagued with domestic violence. The circuit court analyzed the propriety of this testimony in accordance with Rule 702 of the West Virginia Rules of Evidence, and found that the testimony would be helpful to the jury by explaining why victims of domestic violence or abuse respond in ways that may seem strange or unusual to those who are not victims. Petitioner's claim that the circuit court erred in allowing Ms. Spriggs to testify should be rejected.

Finally, the State presented more than sufficient evidence to support the jury's verdict for second-degree murder. The only issue in dispute at trial was Petitioner's intent. In this respect, the jury was told of the tumultuous relationship between Petitioner and Mr. Hendershot, and that Petitioner had been continuously violent toward Mr. Hendershot in the months prior to the murder. The jury was provided evidence detailing Petitioner's familiarity with firearms, as well as her passion for going to the range and shooting them. The jury was also presented with expert testimony that certainly could allow the jury to infer that Petitioner intended to shoot Mr.

Hendershot because of the various safety features on the firearm used in the murder. Petitioner's claim that the State presented insufficient evidence does not point to any essential element of second degree murder for which there was no evidence presented. Rather, Petitioner's claims only question the weight assigned by the jury to certain witness testimony and evidence. Simply disagreeing with the weight the jury assigned to evidence cannot support a claim of insufficient evidence. It only demonstrates that the jury did not agree with Petitioner's theory of the case. Because Petitioner has failed to demonstrate the existence of reversible error during her underlying criminal trial, her appeal should be rejected, and her convictions affirmed.

ARGUMENT

I. Standard of Review

"The evidentiary rulings of a circuit court, including those affecting constitutional rights, are reviewed under an abuse of discretion standard." *State v. Marple*, 197 W. Va. 47, 51, 475 S.E.2d 47, 51 (1996) (citations omitted). Should this Court determine that the prior acts evidence was not intrinsic, this Court's review of a circuit court's admission of evidence pursuant to Rule 404(b) is a three-step analysis: factual determinations as to whether the prior act occurred are reviewed for clear error; whether the court properly determined that the evidence was admissible for a legitimate purpose is reviewed *de novo*; and the circuit court's determination that the evidence is more probative than prejudicial pursuant to Rule 403 is reviewed for an abuse of discretion. *State v. LaRock*, 196 W. Va. 294, 310-11, 470 S.E.2d 613, 629-30 (1996).

Petitioner's assignment of error regarding the admission of Ms. Spriggs' testimony relies on a relevancy argument. Pet'r's Br. 23. Accordingly, this Court reviews challenges to expert testimony based upon claims of relevance "under an abuse of discretion standard." Syl. pt. 3, *Gentry v. Mangum*, 195 W. Va. 512, 466 S.E.2d 171 (1995).

As to Petitioner's sufficiency of the evidence claim, This Court "applies a de novo standard of review to the denial of a motion for judgment of acquittal based on the sufficiency of the evidence." *State v. Juntilla*, 227 W. Va. 492, 497, 711 S.E.2d 562, 567 (2011) (citation omitted). Moreover, this Court has stated that its review of these claims requires the Court to:

> Examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry 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 proved beyond a reasonable doubt.

Syl. pt. 3, *State v. Hypes*, 230 W. Va. 390, 738 S.E.2d 554 (2013) (citation and internal quotation marks omitted).

II. The evidence of Petitioner's prior bad acts was admissible as either intrinsic to the charged offenses or under Rule 404(b) for the purpose of proving motive, lack of accident, or absence of mistake.

The circuit court properly considered the various pieces of evidence the State sought to introduce as either intrinsic or 404(b) evidence prior to ruling that they were admissible during Petitioner's jury trial. The circuit court found that, with the exception of the testimony offered by Mr. Funkhouser, the prior acts evidence was intrinsic, and, therefore, not subject to Rule 404(b) of the West Virginia Rules of Evidence. But, despite this conclusion, the circuit court nevertheless conducted a 404(b) analysis, and provided a limiting instruction for *all* of the prior act evidence, despite having no legal obligation to do so. The record demonstrates that the circuit court carefully and thoroughly considered the evidence before finding it was relevant and admissible. The circuit court also provided the jury with a limiting instruction—again, one which it had no obligation to provide—which was designed to protect Petitioner. To the extent that Petitioner claims she was deprived of some procedural right or protection, the record clearly reveals that the court gave her

more than what she was entitled to. Petitioner's first assignment of error should be denied, and the judgment of the circuit court should be affirmed.

Because Petitioner raises two separate issues within her broader challenge to the admissibility of the prior acts evidence, Respondent will address both, in turn, focusing first on the circuit court's determination that the evidence was admissible as intrinsic evidence or pursuant to Rule 404(b), followed by an analysis into Petitioner's claims that portions of the evidence relied on the admission of inadmissible hearsay.

A. Prior Acts Evidence was admissible either as intrinsic evidence, or for a legitimate purpose under Rule 404(b).

The first step in determining the admissibility of prior bad acts evidence requires that the court first "determine if the evidence is 'intrinsic' or 'extrinsic.'" *State v. Dennis*, 216 W. Va. 331, 351, 607 S.E.2d 437, 457 (2004) (quoting *LaRock*, 196 W. Va. at 312 n.29, 470 S.E.2d at 631 n.29) (additional citation omitted). "Intrinsic" evidence is evidence that 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). The admissibility of this type of evidence holds a critical role in our system of criminal justice, because it is "unquestionably true" "that the prosecution is entitled to prove its case by evidence of its own choice." *Old Chief v. United States*, 519 U.S. 172, 186-87 (1997). And while evidence may "strik[e] hard just because it shows so much at once," it is also true that such evidence appropriately has "force beyond any linear scheme of reasoning, and as its pieces come together a narrative gains momentum, with power not only to support conclusions, but to sustain the willingness of jurors to draw the inferences . . . necessary to reach an honest verdict." *Id.* at 187.

Because the overarching aim in the admission of intrinsic evidence is rooted in helping the jury "to reach an honest verdict," it goes without saying that the State must be permitted to "seek

to place its evidence before the jurors, as much to tell the story of guiltiness as to support an inference of guilt, to convince the jurors that a guilty verdict would be morally reasonable as much as to the point to the discrete elements of a defendant's legal fault." *Id.* at 188. And the admission of this evidence is not guided by the customary strictures of a Rule 404(b) analysis, as the United States Supreme Court has held that the admissibility of intrinsic evidence may be made by proffer, and so long as the "proffer fits into 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." *LaRock*, 196 W. Va. at 312 n.29, 470 S.E.2d at 631 n.29 (citing *United States v. Masters*, 622 F.2d 83, 86 (4th Cir. 1980)). This Court has found the same: intrinsic evidence which is essential to the "indicted charge is not governed by Rule 404(b)." *State v. Harris*, 230 W.Va. 717, 722, 742 S.E.2d 133, 138 (2013).

In *State ex rel. Kitchen v. Painter*, 226 W. Va. 278, 293, 700 S.E.2d 489, 504 (2010), this Court held that evidence offered in a murder prosecution that the defendant was growing marijuana was admissible as intrinsic evidence. This Court held that the defendant and another individual had planned to attack the victim because he believed that the victim had stolen some of the marijuana. *Id.* This led this Court to conclude that "[t]his evidence is inextricably intertwined with the offense of murder because it indicates the appellant's motive for the murder." *Id.* This Court further explained that the evidence was "crucial to explaining the sequence of events immediately prior to the attack on the victims. Thus, the evidence is necessary to provide context and to complete the story of the crime." *Id.*

This case is parallel to this Court's decision in *Dennis* wherein the circuit court allowed evidence of prior domestic violence acts, and found that the acts were necessary to "complete the story of the crime[] on trial" and that the prior acts were intrinsic evidence. *Dennis*, 216 W. Va. at

352, 607 S.E.2d at 458. The *Dennis* Court noted that "[t]his is especially true in light of the domestic violence overlay to the pattern of behavior. Even if we were to conclude that the trial court erred in finding the prior act evidence to be res gestae, we believe the evidence would still be admissible under Rule 404(b)." *Id.*

The evidence at issue in the present case carries an identical purpose to that evidence discussed in *Painter*. At trial, Petitioner did not dispute that she was holding the Ed Brown 1911 9 mm handgun when it discharged and struck Mr. Hendershot in the cheek, which ultimately caused his death. The only dispute was whether Petitioner intentionally pointed the gun at Petitioner and pulled the trigger with the intent to kill Mr. Hendershot, or whether the firearm discharged unintentionally. In proving the State's theory, the most compelling evidence involves the history of violence Petitioner inflicted on Mr. Hendershot. While Petitioner presented a defense that the shooting was accidental or unintentional, the evidence that she had previously pointed an assault rifle at Mr. Hendershot, that she brandished a machete, that she had stabbed Mr. Hendershot with a fork, and that she had destroyed doors in his home in fits of rage are all relevant and compelling pieces of evidence that serve to tell the full story of the relationship that ultimately resulted in Mr. Hendershot's death. Without them, the jury would have no reason to believe that Petitioner had any prior history of acting aggressively toward Mr. Hendershot, or that she had ever said or done anything that could be construed as threatening Mr. Hendershot's life.

The relationship between Mr. Hendershot and Petitioner, and the instances of domestic violence perpetrated by Petitioner are all part of the "story of the crime" that the State is entitled to tell the jury. It is not misleading the jury by deflecting to extraneous issues, because the events at issue demonstrate that the shooting was not an isolated incident that occurred without warning. Mr. Hendershot's murder was part of a continuous series of actions over the course of several

months in which Mr. Hendershot was attempting to have Petitioner leave his home, while Petitioner refused and continued to engage in threatening and violent behavior toward him. It would be disingenuous to expect the jury to render a fair and honest verdict regarding Petitioner's guilt without providing them with this information. Without it, the jury would have been forced to render a verdict based on a single occurrence, despite the presence of other compelling and relevant evidence that would provide context for the relationship and murder.

But, even if this Court finds that any or all of the prior acts were not intrinsic, all of them are admissible under Rule 404(b). The record demonstrates that the circuit court conducted a thorough and well-reasoned analysis regarding the admissibility of each prior act pursuant to Rule 404(b) and this Court's holding in *State v. McGinnis*. Rule 404(b) is inclusionary and allows for the admission of other crimes when those crimes are "relevant to an issue at trial except that which proves only criminal disposition." *State v. McGinnis*, 193 W. Va. 147, 154, 455 S.E.2d 516, 523 (1994) (citation and internal quotation marks omitted). Despite Rule 404(b) containing a list of the various reasons why prior acts evidence may be admissible, the State is not required to "force the evidence into a predetermined compartment," but must only show the evidence is offered for "a relevant purpose other than proving conduct by means of the general propensity inference ('he stole in the past, so he probably stole on this occasion')." *Id.* (footnote omitted). But while the State is not required to offer the evidence for one of the specific purposes set forth in the rule, it 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." *Id.*

This Court has set forth a four-part analysis for lower courts to determine whether prior acts evidence should be admitted pursuant to Rule 404(b). The analysis is as follows: (1) "the prosecution has the burden of identifying a specific and relevant purpose that does not involve the

prohibited inference from character to conduct;" (2) the court must then "determine whether the evidence is relevant under Rules 401 and 402, as enforced by Rule 104"; (3) if the evidence is relevant, the evidence must be reviewed under the balancing test set forth in Rule 403, and, before the evidence may be admitted, "the probative value of such evidence must outweigh risks that its admission will create substantial danger of unfair prejudice"; and (4) if the evidence is admitted, the circuit court must provide a limiting instruction to the jury. *Id.* at 155-56, 455 S.E.2d 524-25 (internal citations, quotation marks, and footnotes omitted).

The State met this first requirement for each of the five prior acts it sought to introduce at trial. The State argued in its initial notice that, while it believed the evidence was intrinsic, all of the prior acts were admissible under Rule 404(b) to show motive, lack of accident, and absence of mistake. App. 74, 674. The circuit court also found that each of the prior acts were relevant under Rules 401 and 402. As to the prior act involving the AR-15, the circuit court found that "it is indeed relevant and it's relevant because we're talking about a domestic argument very close in time. We are talking about an argument that occurred between the defendant and the victim. We're talking about the brandishing of a firearm." App. 688-689. As to the machete incident, the circuit court found that Mr. Savage's testimony established by a preponderance of the evidence that Petitioner brandished a machete in "an effort on the part of the defendant to be interruptive and provoking of an argument." App. 709. The court specifically held that the evidence was "relevant to the [S]tate's theory of the case" and that it placed Mr. Hendershot's murder in context. App. 709.

The court made similar findings regarding Petitioner stabbing Mr. Hendershot with a fork, noting that "the Court is going to incorporate all [o]f its findings as the Court set forth." App. 731. To the extent that Petitioner alleges in her brief that the circuit court erred in summarily addressing

any of the issues, Pet'r's Br. 14, this claim should be rejected. The circuit court decided to incorporate its findings only after Petitioner attempted to argue points by incorporating prior arguments, and the court responded by stating that "I think that this is an excellent way to handle the things we've already hashed out so I appreciate that." App. 731. If this Court concludes that the circuit court's holding is improper, it should likewise conclude that Petitioner waived any error regarding the admissibility of the evidence by using the same tactics to present argument.

With respect to the incident involving Petitioner stabbing her ex-boyfriend with a screwdriver, Petitioner again made "the same arguments you guys have already brought up," then argued that this particular event should be excluded because it occurred "eleven, twelve years ago." App. 735. The circuit court again incorporated the prior analysis regarding the machete incident. App. 736. As to the remoteness claim, the court stated that such issues go "much more to the weight that a jury would give that evidence than it does to the admissibility of the evidence," and cited to this Court's opinion in *Winebarger* as support. *See* syl. pt. 5, *Winebarger*, 217 W. Va. 117, 617 S.E.2d 467 ("As a general rule remoteness goes to the weight to be accorded the evidence by the jury, rather than to admissibility").

With respect to the evidence regarding the damage to the doors, the circuit court held any determination as to the admissibility of the evidence in abeyance until it had the opportunity to rule on the admissibility of the State's expert witness testimony regarding domestic violence. App. 715-16. This was because of the noted overlap between the door incident and the nuances of a relationship plagued by domestic violence. App. 714-16. But Petitioner did not raise another objection to this issue during trial, and the evidence was eventually admitted at trial without

objection from Petitioner.[3] App. 1031, 1424. Thus, while Petitioner certainly objected to the admission of the evidence involving the damage to Mr. Hendershot's doors during the pretrial stages, she abandoned that objection at trial. *See Coleman v. Sopher*, 201 W. Va. 588, 600-01, 499 S.E.2d 592, 604-05 (1997) (noting the requirement under Rule 103 that "[t]imely and specific objections are required," and holding that while the defendant raised an objection to the admission of certain evidence in a pretrial *motion in limine*, defendant's failure to squarely address the claim at trial resulted in a waiver of that objection). Thus, any error in the admission of this specific piece of evidence, for any reason, is waived and should be disregarded.

Because the circuit court found that the events occurred and were relevant, the court then addressed the Rule 403 balancing test. The State argued that the evidence of these incidents presents "no chance of unfair prejudice outweighing the probative value because this case is about the culmination of a tumultuous and violent relationship where the defendant was taking these actions, threatening [Mr. Hendershot]." App. 700. The court noted that the evidence "may well prejudice the defendant but it's not unfair in the circumstances that have been presented to the Court and it doesn't substantially outweigh the probative value of the evidence." App. 709. Finally, the Court gave the jury a limiting instruction prior to each witness that offered the intrinsic or 404(b) evidence prior to their testimony. App. 1350-59, 1365-66, 1419-21. The circuit court again gave the jury a limiting instruction as to how they may consider the subject evidence during its final charge. App. 541-42, 1531-32.

[3] The photographs and text conversations between Petitioner and Ms. Koch regarding the damage to the doors was contained in State's Exhibit 20. App. 393-95. When the State moved for the admission of that specific exhibit at trial, Petitioner responded to the Court's inquiry by stating that she had no objection.

The circuit court did all that it was required to do before admitting each of the five prior acts. Indeed, the court went well beyond that which it was legally required to do before the evidence was admitted. The court first concluded that the evidence in question was intrinsic for the purpose of telling the full story and providing context to the relationship between Petitioner and Mr. Hendershot prior to the murder. And while this conclusion alone was sufficient for the admission of the prior acts evidence, the Court went further, and treated the evidence as if it was admitted pursuant to Rule 404(b). It found that the State had shown by a preponderance of the evidence that the events occurred, that they were relevant in order to demonstrate the tumultuous relationship between Petitioner and Mr. Hendershot prior to the murder, and that the probative value was not outweighed by any risk of unfair prejudice. Finally, the circuit court provided a limiting instruction prior to each witness who testified regarding the prior acts, and provided another limiting instruction in its final charge to the jury. There is no basis to conclude that the evidence was improperly admitted.

The evidence of Petitioner's prior acts was undoubtedly prejudicial to her case. But merely being prejudiced by the evidence is not sufficient to warrant its exclusion. As this Court has aptly stated: "Unfair prejudice does not mean damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." *LaRock*, 196 W. Va. at 312, 470 S.E.2d at 631.

B. The evidence was not based on inadmissible hearsay.

Rule 801(c) of the West Virginia Rules of Evidence defines hearsay as a statement that "the declarant does not make while testifying at the current trial or hearing" and is offered by a party into evidence "to prove the truth of the matter asserted in the statement." The critical component of any hearsay challenge centers around the purpose for which the statement is offered. "If a

statement is not being offered for the truth of the matter asserted but for some other purpose, it is not hearsay and therefore it is admissible." *State v. Burd*, 187 W. Va. 415, 421, 419 S.E.2d 676, 682 (1991).

In particular, Petitioner alleges the AR-15 incident and the incident in which Petitioner damaged doors in Mr. Hendershot's home were based upon inadmissible hearsay. Pet'r's Br. 16. Before Petitioner can legitimately claim that the statements admitted were inadmissible hearsay, she first has to establish that the statements were offered to prove the truth of the matter asserted in the statements. Petitioner does not present a single argument that these were offered for such a purpose. Instead, Petitioner acknowledges that the State offered them for an alternative purpose, such as proving motive, lack of mistake or accident. Pet'r's Br. 16-18. But Petitioner offers no argument as to why these statements did not fall within those categories, and only argues that she simply disagrees with the Court's conclusion. App. 17-18.

The statements were certainly not offered to prove the truth of the matter asserted within any of the statements. The State's evidence was not presented to demonstrate that Petitioner brandished a firearm or machete, but rather to demonstrate that Mr. Hendershot was the victim of domestic violence, and that his murder was part of Petitioner's violence against him.

The evidence complained of came in via text messages in this case. The Fourth Circuit Court of Appeals held that text messages recovered from a defendant's phone and admitted during the defendant's subsequent trial were admissible as non-hearsay statements. *United States v. Goldberry*, 771 Fed.App'x 180, 182 (4th Cir. 2019). In reaching that conclusion, the *Goldberry* court concluded:

> Even assuming the texts were statements, the Government did not introduce them to prove the truth of the matters asserted therein. Rather, the presence on [the defendant's] cell phone of texts interpreted by the Government's expert to be drug trafficking communications was probative of [the defendant's] possession of

> cocaine and heroin with the intent to distribute regardless of whether any assertions in the texts were true or false. The texts were therefore not hearsay, and the district court did not abuse its discretion by admitting them.

Id. (footnote omitted). In the present case, whether Petitioner did, in fact, damage doors in a fit of rage or whether she pointed a firearm at Mr. Hendershot is not the purpose of the evidence. The texts were offered to show a tumultuous relationship between the Petitioner and Mr. Hendershot. Indeed, even if Mr. Hendershot was mistaken with his perception of the events, it still demonstrates that there was a deep-seeded hostility between he and Petitioner, and that Mr. Hendershot no longer wanted her inside his home.

Many of the statements were between Petitioner and Mr. Hendershot. App. 724-26. And Petitioner conceded in her brief that the testimony from Mr. Savage and Mr. Funkhouser would not fall within the category of hearsay. Pet'r's Br. 15-16. As to the statements between Petitioner and Mr. Hendershot, Petitioner acknowledged in her brief that these conversations "could potentially be considered a party admission," Pet'r's Br. at 15-16, and if this is the case, Mr. Hendershot's statements could be admissible as statements describing his then existing physical condition under Rule 803(3) of the West Virginia Rules of Evidence. Petitioner was discussing physical injuries that he had at the time he was sending the messages, and making the same statements to at least two different friends simultaneously. App. 724-26. The text messages were obtained from both Mr. Hendershot's phone during a forensic phone extraction, and from officers observing and photographing the message chains as they appeared in the phones belonging to Mr. Hendershot's friends. App. 724-26. Thus, to the extent that they were hearsay, the State argued they fell under the exception for demonstrating Mr. Hendershot's then existing mental, physical or emotional state, and that it fell within the residual exception pursuant to Rule 807 of the West Virginia Rules of Evidence. App. 724-25.

Under the residual exception, statements that are otherwise hearsay may still be admitted if the statement: (1) has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on that point than any other evidence that the party offering the statement could reasonably obtain; and (4) its admission will serve the purposes of the Rules of Evidence and the interests of justice. W. Va. R. 807(a). Here, even if the statements are hearsay, they possess sufficient circumstantial guarantees of trustworthiness as they are contained in not only Mr. Hendershot's phone, but in the phones of two different individuals to whom he described the events. They were offered to prove a material fact that Petitioner was physically violent toward Mr. Hendershot, and that she engaged in conduct aimed at threatening or controlling him, all of which is relevant to showing that the murder was not the product of a mistake or accident, as Petitioner alleged in her defense. Finally, there is no other way that the State to elicit this testimony, because the proponent of the statements was murdered by the person whom they were offered against. The admission of those statements met the fourth factor because they aimed to give the jury the whole picture of the events that lead up to Mr. Hendershot's murder, and served the ends of justice by not allowing Petitioner to hide her violent behaviors directed at Mr. Hendershot in the months leading up to his murder. For these reasons, the circuit court committed no error in admitting these statements over Petitioner's hearsay objections.

III. The circuit court properly exercised its discretion in admitting Ms. Spriggs' expert testimony regarding domestic violence in order to help the jury understand why domestic violence victims may react in ways that are strange to non-victims.

Petitioner's assertion that the circuit court erred in permitting the State to offer testimony from Katie Spriggs is based upon a complete mischaracterization of the issues on trial. Petitioner argued below that domestic violence had nothing to do with Petitioner's criminal charges. App. 701-02. And in her appellate brief, Petitioner persists in this argument stating that "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." Pet'r's Br. 25. But whether the shooting was intentional or not is directly informed by the fact that Petitioner had been, for months leading up to the murder, physically violent and threatening toward Mr. Hendershot. App. 716, 1303-05.

Regardless, Petitioner points to no legal authority that supports her claim that the circuit court erred in admitting Ms. Spriggs' testimony. The entirety of her argument centers around her disagreement with the State's theory of the case, despite the fact that the State clearly and unequivocally maintained throughout the pendency of the case that its theory hinged on the violent and tumultuous relationship between Petitioner and Mr. Hendershot.

When arguing over the admissibility of Ms. Spriggs' testimony, the State opined that "[b]y looking through the evidence that has been uncovered in the text messaging, the communication, the other observations, the State has to try to put together and present a case of what we believe happened. And this is an integral part of that as it relates to motive." App. 1307. The State pointed out that the jury would hear "that [Petitioner] pointed a gun at the victim. They are going to hear that she stabbed him with a fork and that she stabbed her ex-boyfriend with a screwdriver and that she wielded a machete." App. 1307. The State argued "that alone is not enough for them to understand the significance of those acts as it relates to her motive to kill the victim in this case." App. 1307.

Rule 702 of the West Virginia Rules of Evidence provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue," a properly qualified expert "may testify thereto in the form of an opinion or otherwise[.]" In analyzing this provision, the lower court found that "understanding domestic

violence is not junk science. In fact, it appears to the Court that domestic violence is much more complicated than somebody punching somebody in the nose." App. 1310. The circuit court noted that Ms. Spriggs' testimony would not cover anything specific to the case, but only "what typically happens" in relationships plagued with domestic violence. App. 1310. The circuit court ultimately concluded that "this testimony will be helpful to the jury in understanding the context of those pieces of evidence that have already been admitted." App. 1312. "I think that the fact that the decedent did not respond, as many of us would have expected a 215-pound male would respond, might have to do with the power that was being in his judgment, or in his opinion, as a victim yielded against him for whatever reason, or whatever his perception was." App. 1312-13.

After such a detailed analysis by the lower court, Petitioner bears a heavy burden in showing the circuit court committed a reversible error in the admission of expert testimony. "The decision to admit or reject expert evidence is committed to the sound discretion of the trial court, and the court's determinations are reviewable only for an abuse of discretion." *State v. Wakefield*, 236 W. Va. 445, 455, 781 S.E.2d 222, 232 (2015) (quoting *LaRock*, 196 W. Va. at 306, 470 S.E.2d at 625). Also working against Petitioner's claim here is this Court's recognition that "[t]he Rules of Evidence embody a strong and undeniable preference for admitting any evidence which has the potential for assisting the trier of fact." *Id.* (quoting *San Franciso v. Wendy's Intern., Inc.*, 221 W. Va. 734, 741, 656 S.E.2d 485, 492 (2007)).

Petitioner's claims below and on appeal center upon her assertion that the expert witness testimony was not relevant. But this claim, again, is borne of either her disregard for the State's theory of the case, or a mischaracterization of the available evidence. The circuit court heard the voir dire of Ms. Spriggs prior to her testimony and determined that her testimony was rooted in science, and that her testimony would assist the jury in understanding the intricacies of a

relationship in which one part was the victim of domestic violence, and to explain why a victim would react in ways that may seem incongruous to someone who is not, or has never been, a victim of domestic violence. App. 1309. Petitioner has offered no evidence or argument that would allow this Court to find that the circuit court abused its discretion in making this determination. For those reasons, Petitioner's second assignment of error should be rejected, and the judgment of the circuit court should be affirmed.

IV. The State presented more than sufficient evidence to support the jury's verdicts.

The State presented overwhelming evidence in support of the jury's verdicts of guilt for second-degree murder and the use of a firearm during the commission of a felony. Petitioner's argument that the State presented insufficient evidence relies entirely on her disagreement with the weight assigned by the jury to the evidence presented. Pet'r's Br. 25-30. Thus, Petitioner's argument does not contain any basis for this Court to disturb the jury's verdict and, as a result, this Court should affirm Petitioner's convictions.

One who challenges the sufficiency of evidence to support a conviction "takes on a heavy burden." Syl. pt. 3, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995). When addressing such claims, this Court must "review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have made in favor of the prosecution." *Id.* Stated another way, the evidence "must be viewed from the prosecutor's coign of vantage, and the view must accept all reasonable inferences from it that are consistent with the verdict." Syl. pt. 2, *LaRock*, 196 W. Va. 294, 470 S.E.2d 613. Additionally, "[t]his rule requires the trial court judge to resolve all evidentiary conflicts and credibility questions in the prosecution's favor[.]" *Id.*

"[A] verdict of guilt will not be set aside on the ground that it is contrary to the evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt." Syl. pt. 1, *State v. Hatfield*, 169 W. Va. 191, 286 S.E.2d 402 (1982). When reviewing claims challenging the sufficiency of the evidence, this Court has recognized that "we may accept any adequate evidence, including circumstantial evidence, as support for the conviction." *Guthrie*, 194 W. Va. at 668, 461 S.E.2d at 174. This Court's role in deciding cases alleging insufficient evidence is not to interpret or weigh the evidence, but it "is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt." *Id.* Thus, "a criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden." *Id.* at 669, 461 S.E.2d at 175. This heavy burden precludes this Court from disturbing a jury's verdict "unless we find that reasonable minds could not have reached the same conclusion," and it must "assume that the jury credited all witnesses whose testimony supports the verdict." *Id.* at 669-70, 461 S.E.2d at 175-76.

In the instant case, the primary evidentiary dispute was over whether Petitioner intentionally fired the fatal bullet the caused Mr. Hendershot's death. Petitioner did not dispute that she was the one who shot Mr. Hendershot, or as to the gun that fired the fatal round. While the prior act evidence certainly played an integral part in establishing a motive for the murder, perhaps the most damning evidence came from the State's expert witness in the field of firearms and toolmark analysis, Calissa Carper. App. 1196, 1201. Ms. Carper testified that she conducted an analysis into the Ed Brown 1911 9mm handgun that Petitioner used to shoot Mr. Hendershot, and noted that it is somewhat unique from most semi-automatic handguns. Specifically, Ms. Carper testified that the 1911 handgun had certain safety features, including a thumb safety and a

grip safety. App. 1203-04. Ms. Carper testified that in order for the 1911 handgun to fire, the user would have to chamber a live round, or that a live round was already in the chamber. App. 1203-04. Before the gun could fire, the exposed hammer must be fully cocked. App. 1204. Once the hammer is fully cocked, the thumb safety must be turned off, and the user must disengage the grip safety while simultaneously pulling the trigger in order to make the firearm discharge. App. 1210-11. To fully pull the trigger required 4.25 pounds of pressure. App. 1220.

Ms. Carper also testified that she conducted testing on the firearm to ascertain whether it could have "accidentally" discharged, meaning that the gun fired without the trigger being pulled. App. 1221. Her testing concluded the firearm was in proper working order, and that she was unable to force the firearm to discharge without the trigger being pulled. App. 1224-28.

While Petitioner argued that she did not mean to pull the trigger, the evidence elicited by Ms. Carper and other witnesses could lead a reasonable juror to completely discount such an assertion. In particular, Ms. Carper's testimony revealed that firearm had an exposed hammer that must be fully cocked before it could fire, and that two additional manual safeties must be disengaged in order for the gun to fire. App. 1210-11. And while it may be believable that someone who is unfamiliar with firearms may have inadvertently pulled the trigger on the firearm, the evidence detailing Petitioner's intimate knowledge of firearms rendered such a conclusion unreasonable. In order for Petitioner to have "inadvertently" pulled the trigger, she would have picked up the handgun while the exposed hammer was in the fully cocked position. She would also have had to pick it up either with the thumb safety already disengaged, or Petitioner manually disengaged it herself. She would also have to grip the firearm such that the grip safety became disengaged. Finally, Petitioner would have had to violate one of the three "standard safety rules" for firearms, by placing her finger on the trigger. App. 1240-41.

This information, without any of the other evidence, would have been sufficient for the jury to return a verdict of guilty of second-degree murder. While Petitioner claims there was no evidence presented that would show the shooting was "intentional in any way," Pet'r's Br. at 30, such assertion completely discredits any inferences the jury may have properly made, and also discredits the weight the jury assigned to particular pieces of evidence. Any reasonable juror, after being presented with that evidence, could have concluded that Petitioner intentionally pulled the trigger with the intent to kill Mr. Hendershot.

As to the malice element, "[i]n a homicide trial, malice and intent may be inferred by the jury from the defendant's use of a deadly weapon, under circumstances which the jury does not believe afforded the defendant excuse, justification or provocation for his conduct." Syl. pt. 1, *State ex rel. Corbin v. Haines*, 218 W. Va. 315, 624 S.E.2d 752 (2005) (quotations omitted). In order for the jury to properly infer the existence of malice, the prosecution is required to prove to "the jury['s] satisf[action] that the defendant did in fact use a deadly weapon." Syl. pt. 8, *State v. Carey*, 210 W. Va. 651, 558 S.E.2d 650 (2001) (citation and quotation marks omitted). If, however, "the jury believes . . . there was legal justification, excuse, or provocation, the inference of malice does not arise and malice must be established beyond a reasonable doubt independently without the aid of the inference." *Id.*

Here, if the jury determined that Petitioner intentionally pulled the trigger with the intent to kill Mr. Hendershot, it was permitted to infer that Petitioner did so with malice. Petitioner has offered nothing other than hollow, self-serving, and conclusory statements in support of her contention that the jury's verdict was based upon insufficient evidence.

To the extent that Petitioner alleges that the circuit court erred in denying her motions for judgment of acquittal, or her post-trial motion for a new trial, it must be noted that each motion

Petitioner made was sparse, lacked any specific argument for why the motion was meritorious, and simply offered conclusory assertions. Specifically, Petitioner's motion for judgment of acquittal at the close of the State's case argued only: "[w]e would make the motion that we have to make for a directed verdict of acquittal based on the lack of evidence that the State has provided. The motion is based on the law that requires . . . us to make it." App. 1443-44. In her written post-trial motion for judgment of acquittal, Petitioner offers a similarly sparse argument, stating that the motion "is made out of an abundance of caution to preserve any issues on appeal." App. 547. Petitioner's motion for a new trial contained identical language. App. 549.

At the subsequent sentencing hearing, Petitioner's motion for a judgment of acquittal amounted to the following:

> As I stated in my motion, it's fairly brief, it's a standard motion that we have to file mainly for appella[te] purposes. I made the motion for judgement of acquittal at the State's case in chief, and after our case. And we are renewing that motion for judgment of acquittal just based on the lack of evidence, it's what we have to allege. But, again, it's mainly made so that we can file an appeal after this hearing.

App. 1578-79. Petitioner did add more detail to her motion for a new trial, and argued at the sentencing hearing that:

> I will just, again, rest on the written motion for a new trial based on Rule 33 of the West Virginia Rules of Criminal Procedure, again, allowing for appella[te] motions. I'd also like to renew the objections I made of the 404(b) evidence coming in, specifically. And, again, I just want to renew all of the objections to the rulings against us during the pretrial hearings involving, like I said, the 404(b) evidence, all the prior bad acts, also the admissibility of the various texts and social media messages.

App. 1580.

When ruling on the Petitioner's post-trial motions, the Court noted that:

> based upon [the jury's] verdict, they did listen to the evidence and they considered it. And they found against the defendant and convicted her of Count One of the indictment of the lesser included offen[s]e of Second-Degree Murder, suggesting

> to the Cour that not only did they hear the evidence, but they weighed some of it favorably for her, the defendant.

App. 1581. The court went on to find that it could not "see how they could've found anything else based upon the evidence that was before the Court" regarding the jury's verdict as to the charge of using a firearm during the commission of a felony. App. 1581. The court, accordingly, denied Petitioner's motions.

The circuit court did not err in denying Petitioner's motions for judgment of acquittal, or her motion for a new trial. Petitioner's motions were clearly made as mere formalities, without any meaningful attempt to argue that they should be granted. This, coupled with the overwhelming and compelling evidence presented by the State during trial, all indicate that the jury's verdicts were proper, and were based upon the evidence presented at trial. Petitioner's third assignment of error should be denied, and her convictions affirmed.

CONCLUSION

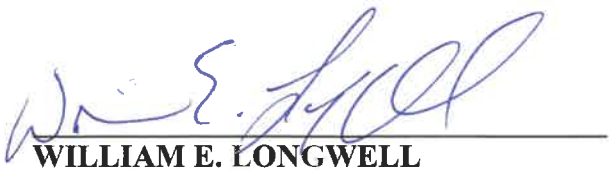
For the foregoing reasons, Respondent respectfully prays this Honorable Court affirm Petitioner's convictions and sentences as set forth in Berkeley County Criminal Case Number 22-F-31.

Respectfully submitted,

STATE OF WEST VIRGINIA,
Respondent,

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 23-546

STATE OF WEST VIRGINIA,

Respondent,

v.

RIDA SHAHID HENDERSHOT,

Petitioner.

CERTIFICATE OF SERVICE

I, William E. Longwell, counsel for the Respondent, hereby certify that I have served a true and accurate copy of the foregoing **Respondent's Brief** upon counsel for Petitioner, through the West Virginia Supreme Court's E-Filing system, in accordance with Rule 38A of the West Virginia Rules of Appellate Procedure on this day, February 29, 2024.

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