STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

State of West Virginia,
Plaintiff Below, Respondent

v.) No. 23-733 (Ohio County Case No. 22-F-5)

William Ross Carman,
Defendant Below, Petitioner

MEMORANDUM DECISION

Following a 2023 jury trial in the Circuit Court of Ohio County, Petitioner William Ross Carman was convicted of first-degree murder, burglary, first-degree robbery, and two counts of gross child neglect creating a substantial risk of serious bodily injury or death, arising from the stabbing death of Anorah Schostag. The central dispute at trial was who committed the murder: Mr. Carman and his then-wife, Amanda Carman,[1] were the only two adults in the home with Ms. Schostag at the time; each testified and accused the other. The jury credited the State's account that Mr. Carman committed the crimes.

Mr. Carman appeals the circuit court's November 21, 2023, sentencing order, arguing that the circuit court violated his right to confrontation under the Sixth Amendment to the United States Constitution and Article III, Section 14 of the West Virginia Constitution by permitting the victim's friend to testify about telephone calls and text messages he had with the victim before her death. Mr. Carman also contends that the circuit court erred by excluding evidence of Amanda's prior felony drug-distribution conviction, which he offered to impeach her credibility under West Virginia Rule of Evidence 609. Finding no substantial question of law and no prejudicial error, we determine that a memorandum decision affirming the circuit court's order is appropriate. *See* W. Va. R. App. P. 21(c).[2]

Facts and Procedural Background

Anorah Schostag was stabbed to death in her home on South Frazier Avenue in Wheeling on September 17, 2021. The crime scene revealed that a brutal attack took place: Ms. Schostag suffered multiple wounds, abrasions, and her throat was slashed so deeply that she was nearly decapitated. She also suffered from thirteen bilateral broken ribs. Ms. Schostag had defensive

[1] For ease of reading this decision, we will refer to Amanda Carman using her first name.

[2] Mr. Carman appears by counsel Matthew Brummond. The State appears by Attorney General John B. McCuskey and Assistant Attorney General Lara K. Bissett.

wounds to her hands, indicating that she had fought for her life. A responding officer testified that Ms. Schostag had a deep chest laceration and that, "blood was everywhere."

The events came to light at around 2:00 p.m. on September 17, 2021, when a passing motorist encountered Amanda and the victim's child standing outside the victim's home on South Frazier Avenue. The motorist stopped and spoke with Amanda who appeared hysterical. Although she declined assistance, the motorist called 911 because he was alarmed that Amanda "had a face full of fear and just dread in her eyes." He reported the incident as a possible domestic dispute. The motorist drove down the street to park by a nearby church and remained in the area to speak with law enforcement. Amanda then went into the home, retrieved her daughter, and fled from the scene in Ms. Schostag's Mercedes.

Officer Rebecca Tobiczyk arrived at the scene within minutes. While she was speaking with the motorist who alerted authorities, Amanda returned to South Frazier Avenue and drove directly up to them; she was "frantic" and reporting that her friend had been attacked inside her friend's house. Amanda initially stated that a masked man committed the crimes and that he might still be in the house. Officer Tobiczyk observed that Amanda had two young children in the vehicle; authorities later identified the children as Amanda and Mr. Carman's daughter, and Ms. Schostag's son.

Other officers arrived at the scene; as they questioned Amanda, they saw Mr. Carman fleeing from Ms. Schostag's home and pursued him. Mr. Carman refused the officers' commands to stop; they chased and apprehended him. Mr. Carman had scratch marks on his neck and a shirt wrapped around his hand. Mr. Carman informed officers that he had a deep wound in his hand, from a knife, and it was bleeding. First responders transported Mr. Carman to the hospital for treatment. Officers entered Ms. Schostag's home for a wellness check and discovered her body.[3]

After forensic evidence linked Mr. Carman to Ms. Schostag's murder, a grand jury returned a five-count indictment in January 2022 charging him with burglary, murder, first-degree robbery, and two counts of gross child neglect. Count 1, the burglary charge, related to a September 14, 2021, break-in at the Shoaf residence (Mr. Carman's uncle's home); officers recovered the Shoafs's stolen firearm from Ms. Schostag's home. Mr. Carman admitted to stealing the firearm from his uncle's home with the intention of selling it to Ms. Schostag. The remaining Counts of the indictment related to the incidents that occurred on September 17, 2021.

A. Pre-Trial Motions

Mr. Carman filed two pre-trial motions relevant to this appeal: (1) a motion to preclude introduction of the statements Ms. Schostag made to her friend Roger Fink hours before her death

[3] Authorities discovered that a neighbor's doorbell camera had recorded a person carrying a bag moving between homes in Ms. Schostag's neighborhood in the early morning hours of September 17, 2021. At trial, Mr. Carman admitted that it was him. A bag, later recovered from a neighbor's trash can, contained a knife, gloves, a holster matching the stolen firearm recovered from Ms. Schostag's home, and a flashlight.

and (2) a motion for a *McGinnis*[4] hearing to determine the admissibility of Amanda's 2013 federal drug distribution conviction under West Virginia Rule of Evidence 404(b). The circuit court held pretrial hearings on these motions.

In support of his motion to impeach Amanda's credibility with her prior drug distribution conviction, Mr. Carman argued that the conviction was admissible as Rule 404(b) evidence of motive, e.g., that she had knowledge of drug transactions and had motive to steal money and drugs from Ms. Schostag. The circuit court denied that motion, calling the connection "a stretch."

Mr. Fink testified at a pretrial hearing, regarding his text communications and phone conversations with Ms. Schostag. Mr. Fink stated that he spoke to Ms. Schostag on the phone at around 9:00 p.m. on September 16, 2021. He testified that Ms. Schostag was in a good mood and told him that she was expecting her friend,[5] along with her friend's young daughter, to spend the night at her home, as they had done the night before. Mr. Fink stated that on September 17, 2021, Ms. Schostag called him around 11:00 a.m.; she was crying, sounded very upset, and was initially difficult to understand. He testified that Ms. Schostag told him that she had been tied up and beaten by "her husband," which Mr. Fink understood to be a reference to her friend's husband, because he knew that Ms. Schostag's husband was deceased. Mr. Fink stated that Ms. Schostag said that she had managed to free herself after her attacker had fallen asleep, but he was still in her home. He urged her to call the police, but Ms. Schostag was reluctant to do so because she had drugs in her house, and she wanted to get her son out first. Mr. Fink stated that at 1:08 p.m., he called Ms. Schostag to check on her well-being; she answered the phone in a very flat voice, and he could tell something was wrong. Mr. Fink testified that he asked Ms. Schostag if her assailant was in the room with her and she confirmed that he was. Mr. Fink demanded to speak with the assailant, and Ms. Schostag handed him the phone. Mr. Fink told the assailant to leave; although Mr. Carman was not identified by name, the assailant had a male voice. When Ms. Schostag resumed her conversation with Mr. Fink, she expressed that things seemed to be headed for a calm and peaceful resolution. After that phone conversation, Mr. Fink communicated with Ms. Schostag by text message; she sent her last message at 1:24 p.m.

The defense argued that the conversations and text communications between Mr. Fink and Ms. Schostag were inadmissible hearsay and more prejudicial than probative. However, the circuit court allowed their admission as falling within exceptions against the general hearsay rule, concluding that: (1) the 9:00 p.m. phone conversation on September 16, 2021, was admissible as res gestae evidence and as a present sense impression exception to the hearsay rule; (2) the 11:00 a.m. and 1:08 p.m. phone calls on September 17, 2021, were admissible as present sense impression and excited utterance exceptions to the hearsay rule, W. Va. R. Evid. 803(1) and 803(2); and (3) Ms. Schostag's statements generally were under Rule 807's residual exception.

B. Trial

[4] *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994).

[5] Ms. Schostag did not identify her friend by name.

Mr. Carman's jury trial began on July 31, 2023. The case turned on who was responsible for Ms. Schostag's murder. Mr. Carman blamed Amanda and she blamed him.

The State introduced over two hundred exhibits and submitted forensic evidence tying Mr. Carman to Ms. Schostag's murder: Mr. Carman's blood was found in the room where the murder occurred and throughout the house; his clothing bore Ms. Schostag's DNA; the socks he was wearing when arrested were covered in Ms. Schostag's blood; and a bloodied cellular telephone recovered next to Ms. Schostag's body had Mr. Carman's fingerprints on it. By contrast, Amanda had only a single drop of blood on her ankle; forensics determined that it came from a single female contributor—not Amanda or Ms. Schostag.

Amanda testified for the State pursuant to a plea agreement.[6] The State initially charged her in connection with the murder, but in exchange for her testimony against Mr. Carman, the State permitted her to plead guilty to gross child neglect. Before Amanda testified, the defense renewed its request to impeach Amanda's credibility with her 2013 federal felony conviction for drug distribution, this time relying on Rule 609 of the West Virginia Rules of Evidence and *State v. Michael C.*, 248 W. Va. 75, 887 S.E.2d 60 (2023). After a recess, the court excluded any evidence of Amanda's prior conviction, finding its probative value was substantially outweighed by the danger that it could create unfair prejudice, or confuse the jury. The court distinguished *Michael C.* on the grounds that the prior conviction in that case was factually related to the charge. However, the court permitted defense counsel to question Amanda about her probation and explore the drug activity in the case; it ruled that any denial by Amanda about those matters would open the door to the State impeaching her with the prior conviction.

Amanda testified that she was friends with Ms. Schostag and that she and her daughter were staying with Ms. Schostag at the time of the murder. Amanda admitted that she and Ms. Schostag used drugs together—methamphetamine, cocaine, and marijuana—even while Amanda worked as a peer recovery coach for a local charity. She also admitted that she was on probation. Amanda explained that she was estranged from her then-husband, Mr. Carman, who was living in a homeless camp at the time. Amanda acknowledged that, in her initial statements to police on the day of the murder, she had described the assailant as a masked stranger. At trial, however, she testified that Mr. Carman had planned to rob Ms. Schostag, but she tried to dissuade him, telling him that there was always someone present in the home. Amanda testified that on the day of the murder, Mr. Carman brought a stolen firearm and two knives into the home, and that she watched him stab Ms. Schostag before she fled with the children.

Ms. Schostag's brother, Ryan Schostag,[7] testified that he had moved in with his sister roughly a year before her death to help her following the death of her son's father. Ryan testified that he slept in a basement apartment area of the home; he acknowledged that his sister kept drugs in the home—methamphetamine, cocaine, and marijuana. Ryan admitted that he was addicted to narcotics at the time. On the day of the murder, Ryan was not at Ms. Schostag's home; he spent the night out with his girlfriend. Ryan arrived at his sister's home on the day of the murder, while

[6] Amanda had divorced Mr. Carman prior to trial.

[7] For ease of reading this decision, we will refer to Ryan Schostag using his first name.

authorities were questioning Amanda. He testified that he retrieved a bag that contained drugs from his sister's Mercedes without alerting authorities. Ryan testified that he suspected that Amanda stole money from his sister. Ryan stated that his sister recently received a $17,000 settlement after she was in a vehicle accident. Ryan testified that days after his sister's murder, he discovered, and later reported to police, a number of items that were out of place: a pistol in a drawer of the kitchen hutch, which he said did not belong to his sister because she did not keep guns in the home; $40 with blood on it inside the pocket of his camouflage shorts; multiple bags staged around the house, packed with jewelry, antique marbles, and other items.

Before Mr. Fink took the stand, the defense objected again to the admission of Ms. Schostag's statements through his testimony. The defense argued that Ms. Schostag was not subject to cross-examination, and, therefore, the admission of her statements contravened Mr. Carman's right to confrontation. The State argued that Mr. Carman's act of killing Ms. Schostag had made her unavailable within the meaning of West Virginia Rule of Evidence 804(b)(6), which negated his right of confrontation. The circuit court ruled that it would permit the testimony, concluding that the State made a prima facie showing that Mr. Carman's actions made the witness unavailable under Rule 804(b)(6). *See* Syl. Pt. 4, *State v. Jako*, 245 W. Va. 625, 862 S.E.2d 474 (2021) ("Before a circuit court may admit an out-of-court testimonial statement under the common law, forfeiture-by-wrongdoing doctrine, codified in Rule 804(b)(6) of the West Virginia Rules of Evidence (2014), the court must find by a preponderance of the evidence that the defendant (1) acted wrongfully, or acquiesced to the wrongful actions of another; (2) did so with the intent to cause a witness to be unavailable; and (3) actually rendered the witness unavailable.").

Mr. Fink testified that he and Ms. Schostag met through a mutual friend and spoke frequently. He described his phone conversations and text communications with Ms. Schostag hours before the murder consistently with his testimony at the pretrial hearing. Mr. Fink stated that he learned of Ms. Schostag's murder the following day, a Saturday, and contacted the police on Sunday. Mr. Fink gave officers his call log and text messages from his cellular telephone.

Mr. Carman testified and briefly explained his criminal history and drug addiction. Mr. Carman stated that he first went to prison for three years for stealing money from a bar. While on parole, he dated Amanda, who also suffered from an addiction to narcotics. Mr. Carman testified that he successfully completed parole but was later convicted of possession of methamphetamine, Suboxone, and marijuana, for which he spent six months in jail. Mr. Carman stated that after he was released, he began using methamphetamine and fentanyl and eventually became homeless.

Mr. Carman admitted that he stole a firearm from his uncle's home with the intention of selling it to Ms. Schostag; he knew that she sold drugs and believed she would be interested in buying a firearm. Mr. Carman testified that he and Amanda worked out a plan to steal money and drugs from Ms. Schostag with her letting him into Ms. Schostag's home, under the guise that he was there to sell her the gun. Mr. Carman stated that Amanda let him into Ms. Schostag's home in the early hours of September 17, 2021; when Ms. Schostag woke up later that morning, he, Amanda, and Ms. Schostag got high on methamphetamine together. Mr. Carman stated that he haggled with Ms. Schostag about trading or selling the gun, and she sent him to look through her brother's possessions in the basement to see if there was anything worth trading. Mr. Carman

stated that he passed out and fell asleep while in the basement; when he woke up and went back upstairs, he saw that bags were packed as if someone was leaving the house. Mr. Carman testified that Amanda used a knife and stabbed Ms. Schostag in the chest; he tried to separate them and suffered a stab wound in the back of his hand.

The jury convicted Mr. Carman on burglary, first-degree murder, first-degree robbery, and two counts of gross child neglect creating a substantial risk of serious bodily injury or death. Mr. Carman moved for a new trial arguing, in relevant part, that the circuit court erred in (1) disallowing cross-examination of Amanda regarding her prior felony conviction under West Virginia Rule of Evidence 609, and (2) admitting the testimony of Mr. Fink regarding his telephone conversations with the victim, within hours of her murder. On September 26, 2023, the circuit court denied the motion, finding the State presented "overwhelming physical, scientific and eyewitness testimony" of Mr. Carman's guilt on each of the counts of the indictment.

At the November 8, 2023, sentencing hearing, the circuit court sentenced Mr. Carman to one to fifteen years for his burglary conviction, life without mercy for his first-degree murder conviction, seventy-five years for his first-degree robbery conviction, and one to five years for each count of his gross child neglect creating a substantial risk of serious bodily injury or death convictions. The court ordered the sentences to run consecutively. The circuit court entered its sentencing order on November 21, 2023, and Mr. Carman timely appealed.

Standard of Review

This Court has held that

> "'[r]ulings on the admissibility of evidence are largely within a trial court's sound discretion and should not be disturbed unless there has been an abuse of discretion.' *State v. Louk*, [171 W. Va. 639], 301 S.E.2d 596, 599 (1983)." Syl. pt. 2, *State v. Peyatt*, 173 W. Va. 317, 315 S.E.2d 574 (1983).

Syl. Pt. 4, *State v. Farmer*, 185 W. Va. 232, 406 S.E.2d 458 (1991). Of specific relevance to this case, "'[t]he extent to which prior convictions may be introduced to impeach the credibility of a witness other than the defendant in a criminal trial rests within the sound discretion of the trial court.' Syl. Pt. 9, *State v. Davis*, 176 W. Va. 454, 345 S.E.2d 549 (1986)." Syl. Pt. 2, *State v. Greenfield*, 237 W. Va. 773, 791 S.E.2d 403 (2016). Other standards of review relevant to this appeal are included in the discussion below.

Discussion

Mr. Carman first argues that the circuit court violated his right to confrontation under the Sixth Amendment to the United States Constitution and Article III, Section 14 of the West Virginia Constitution by permitting Mr. Fink, to testify about telephone calls and text messages he had with Ms. Schostag before her death.[8] Mr. Carman contends that forfeiture by wrongdoing cannot support admission of these statements because the circuit court's ruling fell short of the standard

[8] Mr. Carman does not challenge the circuit court's ruling that these statements fell within exceptions to the rule against hearsay.

set forth in *Jako* as it did not find that Mr. Carman acted wrongfully with the intent to render the witness unavailable. The State responds that it is unnecessary for this Court to conduct a forfeiture-by-wrongdoing analysis because the statements were nontestimonial and never triggered the Confrontation Clause. *See Ohio v. Clark*, 576 U.S. 237 (2015). Although the circuit court did not address the non-testimonial nature of Ms. Schostag's statements, the State notes that this Court may affirm that judgment on "'any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment.'" *State v. Coles*, 234 W. Va. 132, 139 n.18, 763 S.E.2d 843, 850 n.18 (2014) (quoting Syl. Pt. 3, *Barnett v. Wolfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965)). Mr. Carman replies that Ms. Schostag's statements to Mr. Fink were clearly testimonial because Mr. Fink's questions about who harmed her were "quintessential[ly] testimonial."

In Syllabus Point 6 of *State v. Mechling*, 219 W. Va. 366, 633 S.E.2d 311 (2006), *modified on other grounds by State v. Jako*, 245 W. Va. 625, 862 S.E.2d 474 (2021), this Court held:

> Pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), the Confrontation Clause contained within the Sixth Amendment to the *United States Constitution* and Section 14 of Article III of the *West Virginia Constitution* bars the admission of a testimonial statement by a witness who does not appear at trial, unless the witness is unavailable to testify and the accused had a prior opportunity to cross-examine the witness.

"In a *Crawford* challenge, we must initially determine whether the challenged evidence is testimonial. 'Whether a statement is testimonial for Confrontation Clause purposes is a question of law.'" *State v. Thompson*, 253 W. Va. 23, __, 927 S.E.2d 885, 895 (2026) (quoting 23 C.J.S. *Criminal Procedure and Rights of Accused* § 913, at 247 (2016)). Consequently, we give this question plenary review because "[w]here the issue on an appeal from the circuit court is clearly a question of law ... we apply a *de novo* standard of review." Syl. Pt. 1, in part, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995).

"To determine if a statement is testimonial, we must decide whether it has 'a primary purpose of creating an out-of-court substitute for trial testimony.'" *Bullcoming v. New Mexico*, 564 U.S. 647, 669 (2011) (Sotomayor, J., concurring in part) (quoting *Michigan v. Bryant*, 562 U.S. 344, 358 (2011)). "If a statement's primary purpose is 'not to create a record for trial,' then the Confrontation Clause does not apply." *United States v. Reed*, 780 F.3d 260, 269 (4th Cir. 2015) (quoting *Bryant*, 562 U.S. at 358). Whether a statement is testimonial under the Confrontation Clause is determined by an objective totality of the circumstances test. "In the end, the question is whether, in light of all the circumstances, viewed objectively, the 'primary purpose' of the conversation was to 'creat[e] an out-of-court substitute for trial testimony.'" *Clark*, 576 U.S. at 245 (quoting *Bryant*, 562 U.S. at 358). In *Crawford*, the Supreme Court did not define what a testimonial statement is, but said there are three "formulations" of the "core class of testimonial statements:

> *ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pre-trial statements that declarants would reasonably

> expect to be used prosecutorially; extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

Crawford, 541 U.S. at 51–52 (internal quotation marks omitted).

An objective examination of the facts in this case weighs against any finding that Ms. Schostag's statements—during phone calls and text messages—to her friend Mr. Fink were testimonial. Ms. Schostag was not being interrogated, she was not making a formal statement, she was not being questioned by a police officer, and the statements were not made with the expectation that they would be used in the prosecution. Rather, she reached out to a friend, seeking comfort during a traumatic event. *See, e.g.*, *State v. Sorenson*, 770 N.W.2d 701, 707 (N.D. 2009) (stating that "[o]ther courts considering similar arguments have held that out-of-court statements by an individual to a friend, family member or cellmate are non-testimonial statements"); *United States v. Manfre*, 368 F.3d 832, 838 n.1 (8th Cir. 2004) ("[Declarant]'s comments were made to loved ones or acquaintances and are not the kind of memorialized, judicial-process-created evidence of which *Crawford* speaks."). Although Mr. Fink urged her to call 911, Ms. Schostag told him that she did not want to alert authorities because there were drugs in her home. Further, she made the statements during an ongoing emergency—Ms. Schostag was attacked in her home, and the perpetrator was still there. For this reason, the circuit court concluded that Ms. Schostag's statements were excited utterances, and Mr. Carman does not challenge that ruling on appeal.[9] As we explained in *Thompson*, it "'is highly unlikely that a declarant[']s statement can qualify as a "classic excited utterance" while at the same time reflect as its primary purpose the production of evidence against an accused. In short, excited utterances are more likely to fall with [sic] the orbit of nontestimonial hearsay under the Sixth Amendment.'" *Thompson*, 253 W. Va. at __, 927 S.E.2d at 896 (quoting 30 Wright & Miller, *Fed. Prac. & Proc. Evid*. § 6623 (2d ed. 2025)). For these reasons, we conclude that Ms. Schostag's statements to Mr. Fink were not testimonial and not subject to the Confrontation Clause.

Mr. Carman next argues that the circuit court erred by excluding evidence of Amanda's 2013 felony conviction for drug distribution under West Virginia Rule of Evidence 609. Mr. Carman contends that the court's ruling was prejudicial to the outcome of the case as it hindered his ability to impeach Amanda's credibility. The State argues that any error in not admitting Amanda's prior conviction under Rule 609 was harmless. We agree.

Rule 609(a)(2)(A) of the West Virginia Rules of Evidence provides, in relevant part:

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[9] *See* Syl. Pt. 7, *State v. Sutphin*, 195 W. Va. 551, 466 S.E.2d 402 (1995) ("In order to qualify as an excited utterance under W. Va. R. Evid. 803(2): (1) the declarant must have experienced a startling event or condition; (2) the declarant must have reacted while under the stress or excitement of that event and not from reflection and fabrication; and (3) the statement must relate to the startling event or condition."). Neither party disagrees with the circuit court's ruling that the statements at issue meet these three factors.

> *All Witnesses Other Than Criminal Defendants.* – For the purpose of attacking the credibility of a witness other than the accused . . . evidence that the witness has been convicted of a crime *shall be admitted*, subject to rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law which the witness was convicted[.]

(Emphasis added). As this Court noted in *State v. Williams*, 236 W. Va. 130, 778 S.E.2d 579 (2015): "Under Rule 609, counsel is permitted to discredit a witness by showing that the witness has been convicted of a crime." 236 W. Va. at 136, 778 S.E.2d at 585. "The language of the rule is mandatory, evidencing a presumption that a witness's conviction of *any* crime punishable by imprisonment in excess of one year is fair game for impeachment and thus relevant to the witness's credibility." *Michael C.*, 248 W. Va. at 79–80, 887 S.E.2d at 64–65.

Admissibility of a prior felony conviction to impeach a witness is subject only to the finding that the probative value of the evidence is substantially outweighed by one or more of the factors set forth in Rule 403 of the West Virginia Rules of Evidence:

> The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Id.

We conclude that the circuit court abused its discretion by excluding the admission of Amanda's prior felony conviction for drug distribution. The conviction is presumptively admissible under Rule 609 to impeach her credibility subject only to Rule 403. The circuit court's stated reason for exclusion—that the conviction was not factually related to the charged offenses—rests on a consideration that *Michael C*. holds is not a permissible basis for excluding Rule 609 impeachment evidence. *Id*., 248 W. Va. 75, 887 S.E.2d 60, Syl. Pt. 3 ("The question of whether or not the evidence of a witness's prior conviction is relevant is not a factor in determining its admissibility under West Virginia Rule of Evidence 609; by definition, the evidence is relevant to impeach the witness's credibility.").

However, under the facts presented here, we agree with the State that the circuit court's Rule 609 error was harmless. In *Michael C.*, this Court found reversible error when the circuit court excluded evidence of the State's key witness's prior conviction because it left the defendant with no other means of impeaching the witness, thus depriving him of his sole defense. *Id*. at 81, 887 S.E.2d at 66. However, the circuit court's ruling here did not prevent the defense from developing its theory that Amanda—a drug user who was on probation and knew that Ms. Schostag kept drugs in the home—had motive to commit the crimes. The defense questioned Amanda about her drug use, her probation, and her access to drugs while staying at Ms. Schostag's home. Amanda admitted that she shared methamphetamine, cocaine, and marijuana with Ms. Schostag. Further, Ryan testified that he suspected that Amanda had robbed his sister; he retrieved a bag containing drugs from the victim's Mercedes after Amanda returned to the scene of the crime.

Therefore, the defense established that Amanda had motive for committing the crimes. *See, e.g.*, *Rogers v. State*, 796 So. 2d 1022 (Miss. 2001) (any error in not allowing defendant to impeach state's witness, in murder prosecution, about his prior drug conviction was harmless, where defendant was able to use witness's testimony and the testimony of other witnesses to show witness's involvement with and use of drugs, including witness's use of drugs the day of the shooting). Accordingly, we conclude that the circuit court's refusal to admit Amanda's prior conviction was, at most, harmless error.

Conclusion

For the foregoing reasons, we affirm the Circuit Court of Ohio County's November 21, 2023, sentencing order.

Affirmed.

ISSUED: November 12, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan