IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 24-197

FILED
November 4, 2026
released at 3:00 p.m.
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,

v.

RANDY LYNN KNOTTS,
Defendant Below, Petitioner.

Appeal from the Circuit Court of Preston County
The Honorable Steven L. Shaffer
Case No. CC-39-2022-F-104

REVERSED AND REMANDED

Submitted: September 9, 2026
Filed: November 4, 2026

Samuel P. Hess, Esq.
Public Defender Corp.
Kingwood, West Virginia
Counsel for the Petitioner

John B. McCuskey, Esq.
Attorney General
Andrea Nease, Esq.
Deputy Attorney General
Charleston, West Virginia
Counsel for the Respondent

JUSTICE TRUMP delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "Rulings 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." Syl. Pt. 2, *State v. Peyatt*, 173 W. Va. 317, 315 S.E.2d 574 (1983) (citation modified).

2. "When improper evidence of a nonconstitutional nature is introduced by the State in a criminal trial, the test to determine if the error is harmless is: (1) the admissible evidence must be removed from the State's case and a determination made as to whether the remaining evidence is sufficient to convince impartial minds of the defendant's guilt beyond a reasonable doubt; (2) if the remaining evidence is found to be insufficient, the error is not harmless; (3) if the remaining evidence is sufficient to support the conviction, an analysis must then be made to determine whether the error had any prejudicial effect on the jury." Syl. Pt. 2, *State v. Atkins*, 163 W. Va. 502, 261 S.E.2d 55 (1979).

3. "In reviewing challenges to findings and rulings made by a circuit court, we apply a two-pronged deferential standard of review. We review rulings of the circuit court concerning a new trial and its conclusion as to the existence of reversible error under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a de novo review." Syl. Pt. 3, *State v. Vance*, 207 W. Va. 640, 535 S.E.2d 484 (2000).

4. "'In the trial of a criminal case, a defendant who elects to testify may have his credibility impeached by showing prior convictions of perjury or false swearing, but it is impermissible to impeach his credibility through any other prior convictions.' Syl. Pt. 1, *State v. McAboy*, 160 W. Va. 497, 236 S.E.2d 431 (1977)." Syl. Pt. 1, *State v. Toppings*, 166 W. Va. 40, 272 S.E.2d 463 (1980).

TRUMP, J.:

Petitioner Randy Lynn Knotts appeals his conviction and sentencing entered by the Circuit Court of Preston County on March 10, 2024, on eleven felony counts related to the alleged sexual abuse of his step-daughter. He contends that the circuit court erred at trial by allowing the State to cross-examine him, in violation of Rules 609 and 404 of the West Virginia Rules of Evidence, about twenty-year-old misdemeanor domestic battery and domestic assault convictions. The State maintains that the circuit court did not rely on either Rule 609 or Rule 404(b). Rather, the State argues that Rule 404(a)(2)(A), which permits the State to rebut evidence of a criminal defendant's pertinent character trait, authorized the admission of evidence of the convictions after the petitioner denied being a violent man. Alternatively, the State contends that any error was harmless. We disagree and reverse the circuit court's judgment, remanding for a new trial.[1]

I. FACTS AND PROCEDURAL HISTORY

The petitioner was indicted by a grand jury in October 2022, charged with one count of first-degree sexual assault, six counts of third-degree sexual assault, and four counts of sexual abuse by a parent, guardian, custodian, or person in a position of trust stemming from his alleged sexual abuse of his step-daughter when she was between eleven

[1] The petitioner also assigns error to the circuit court permitting the alleged victim to testify by live, closed-circuit television without satisfying West Virginia Code § 62-6B-3 and admitting photographs of and testimony concerning the unclean and unkempt condition of his home in violation of West Virginia Rule of Evidence 401. We find these alleged errors to be meritless.

and fourteen years of age. Prior to trial, the State filed its "Notice of Intent to Use Rule 404(b) Evidence at Trial," and the court held a "*McGinnis* hearing" to determine the admissibility of the proffered evidence. *See* Syl. Pt. 2, *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994). During the hearing, the State advised the petitioner and the court that it intended to introduce evidence through the alleged victim's testimony of what it characterized as the petitioner's "prior bad acts" relative to the alleged victim. However, instead of being Rule 404(b) evidence, what the State proffered was intrinsic evidence of the charged offenses.[2] The court properly ruled the evidence to be admissible on that basis. Absent from the State's 404(b) notice, however, and never mentioned by the State during the *McGinnis* hearing, were the petitioner's 1998 and 2002 misdemeanor domestic battery convictions and his 1997 misdemeanor domestic assault conviction. Although the State was not required to include notice of its intent to use these convictions for impeachment purposes in its Rule 404(b) disclosure, Rule 609(b)(2) separately requires "reasonable written notice" of that intent "so that the party has a fair opportunity to contest its use[,]" and the State provided no such notice at any time prior to its cross-examination of the petitioner.

The petitioner testified during trial, and he denied committing the charged crimes against his step-daughter. He also denied the specific actions and conduct to which

[2] This evidence is not relevant to the petitioner's appeal, so we decline to discuss it due to the nature of the charged offenses.

the alleged victim had testified when she was on the stand. The part of the State's cross-examination of the petitioner relevant to the assignment of error was as follows:

> Prosecutor: Are you a violent man?
>
> Petitioner: No.
>
> Prosecutor: Well, I'm guessing you don't remember your conviction for domestic battery in 2002?
>
> Petitioner: 2002? I don't.
>
> Prosecutor: Are you telling the jury that you have not been convicted of domestic battery?
>
> Petitioner: 2002?

Defense counsel objected and moved for a mistrial, arguing that the prosecutor's question constituted improper Rule 404(b) evidence.[3] The State responded that:

> it's not 404(b). It's impeachment. I would've never brought it up. If he says yes I have had violent tendencies in the past, then I couldn't go any further, but when he denies having – being a violent man when he has multiple convictions for domestic assault and domestic battery, that's not 404(b), that's impeachment.

The court noted the similarity of this exchange "to the conversation we had yesterday. Basically, if he would've said yes then basically it would not be used to impeach him. . . . So I'm going to permit [the prosecutor] to ask if [the petitioner] has a conviction, and if he

[3] The record indicates that defense counsel's argument is inaudible; however, the gist of the argument can be gleaned from the prosecutor's response.

wants to say no, then that's [impeachable]."[4] The State's cross-examination of the petitioner resumed:

> Prosecutor: Mr. Knotts, you have had a little bit of time to think on it, I'm going to ask you again, have you been a violent man?
>
> Petitioner: I can't say I am a violent man, but I have had restraining orders.
>
> Prosecutor: You've had restraining orders?
>
> Petitioner: Yeah.
>
> Prosecutor: You've also had convictions for domestic battery, in 2002, did you have another conviction for domestic battery in 1998?
>
> Petitioner: Give me a minute. I'm trying to think.
>
> Prosecutor: That's not an important –
>
> Petitioner: Yes
>
> Prosecutor: -- thing that happened in your life a conviction for a violent act.
>
> Petitioner: It wasn't a violent act – it was just my girl – ex-girlfriend grabbed me by the throat and I pushed her down and she called the law on me and got me for domestic battery.

[4] Again, the transcript notes that the end of the court's pronouncement is inaudible. However, based on context, it is clear that the court allowed the State to continue with its line of questioning purporting to impeach the petitioner.

It is also notable that "the conversation we had yesterday" was a reference to the court's consideration of whether and how defense counsel could impeach the alleged victim if her testimony on the stand were to be inconsistent with prior statements she had made in this case. Specifically, the discussion centered on statements the alleged victim had made during interviews at a Child Advocacy Center and West Virginia Rule of Evidence 613 governing a witness's prior statement.

Prosecutor: What about the second domestic battery?

Petitioner: It was the same thing.

Prosecutor: Well, one was in 2002 and the other one is in 1998.

Petitioner: It was from my ex-girlfriend.

Prosecutor: So there was t[w]o batteries against one ex-girlfriend?

Petitioner: Yes. Because I shoved her down to get her away from me.

Prosecutor: What happened in the [sic] 1997 when you got convicted for domestic assault?

Petitioner: I can't remember.

The prosecutor then went on with another line of questioning. In its closing argument, the State again referenced the petitioner's prior convictions, stating, "Then [he] lies to you about having a violent history. I had to impeach him by confronting him with that prior violent history. He conveniently forgot about those."

At the close of all the evidence, the jury convicted the petitioner of all counts in the indictment. Following trial, the petitioner renewed his motion for a judgment of acquittal or, alternatively, for a new trial. The circuit court conducted a hearing on the petitioner's motion, and in its November 12, 2023, order, found that the State's impeachment of the petitioner with his prior convictions was permissible. Specifically, the

order provides that because the allegations against the petitioner were "of sexual offenses against a child through the use of force, the court FINDS that a pertinent character trait includes a propensity toward peacefulness or toward violence." The court reasoned that the petitioner "brought his own character into question when he introduced specific instances of conduct, such as when he denied acts alleged by [the alleged victim] that were not part of the criminal charges, such as physical abuse or breaking her cellular phones." Consequently, the court explained, the State was entitled to cross-examine him about his character and impeach him with the prior convictions when, responding to the State's question, he denied being a violent man. The court concluded that, rather than as a general attack on the petitioner's credibility, the purpose of introducing the convictions was "to rebut evidence of his character as to peacefulness, which the State was entitled to do under Rule 404(a) and Rule 405 of the West Virginia Rules of Evidence." Finally, the court found that if the petitioner's prior convictions were wrongfully admitted, the error was harmless. Thereafter, the circuit court entered its sentencing order on March 10, 2024, sentencing the petitioner to an indefinite term of imprisonment of seventy-one to two hundred ten years. It is from this order that the petitioner appeals.

II. STANDARDS OF REVIEW

In this case, we are called upon to review the circuit court's admission of the petitioner's prior misdemeanor domestic violence convictions as impeachment evidence. In doing so, we are mindful 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." Syl. Pt. 2, *State v. Peyatt*, 173 W. Va. 317, 315 S.E.2d 574 (1983) (citation modified). However, "[e]ven if we find the circuit court abused its discretion, the error is not reversible unless the defendant was prejudiced." *State v. Marple*, 197 W. Va. 47, 51, 475 S.E.2d 47, 51 (1996). Further,

> Where improper evidence of a nonconstitutional nature is introduced by the State in a criminal trial, the test to determine if the error is harmless is: (1) the inadmissible evidence must be removed from the State's case and a determination made as to whether the remaining evidence is sufficient to convince impartial minds of the defendant's guilt beyond a reasonable doubt; (2) if the remaining evidence is found to be insufficient, the error is not harmless; (3) if the remaining evidence is sufficient to support the conviction, an analysis must then be made to determine whether the error had any prejudicial effect on the jury.

Syl. Pt. 2, *State v. Atkins*, 163 W. Va. 502, 261 S.E.2d 55 (1979). Finally,

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

Syl. Pt. 3, *State v. Vance*, 207 W. Va. 640, 535 S.E.2d 484 (2000). These standards guide us in considering the evidentiary issue raised by the petitioner.

III. DISCUSSION

In his appeal before this Court, the petitioner contends that the circuit court erred by permitting the State to introduce evidence of his prior misdemeanor domestic

battery and domestic assault convictions after asking him whether he considered himself a violent person. We agree, finding that admission of evidence of these remote convictions violates Rules of Evidence 404(a)(2)(A) and 609.

The State argued that the convictions were properly admitted under Rule 404(a)(2)(A) to impeach the petitioner, who responded in the negative when the State asked him if he was a violent man. That is a misapplication of the rule, which permits a criminal defendant to "offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it[.]" W. Va. R. Evid. 404(a)(2)(A). The Rule does not, however, authorize the State to manufacture an occasion for character rebuttal by asking a defendant on cross-examination about his character, when the defendant has not offered evidence of his character, and then use his answer to introduce otherwise inadmissible specific instances of misconduct. As we explained in *State v. Kessler*, 248 W. Va. 289, 297-98, 888 S.E.2d 789, 797-98 (2023), "[t]he State may not ask questions designed to place a defendant's character at issue and then claim the defendant's responses opened the door to otherwise inadmissible evidence." Yet that is precisely what occurred here. The State asked the petitioner whether he was a violent man. He answered in the negative. The State then used that answer to elicit evidence of his prior misdemeanor domestic battery and domestic assault convictions.

Contrary to the circuit court's finding, the petitioner did not first place his character for peacefulness before the jury during his direct examination. He testified in

response to allegations made by the alleged victim during her testimony, denying both the charged conduct and the uncharged behavior that was intrinsic to those allegations. He did not claim that the allegations could not have occurred because of his peaceful or non-violent character; he simply denied committing the crimes with which he was charged and the allegations of conduct intrinsic to the charges. It was the prosecutor, not the petitioner, who first placed the petitioner's character at issue by asking him whether he was a violent man. The State conceded as much in its brief, acknowledging that "general evidence as to [the] petitioner's propensity for violence, or his character relating to the same, was not previously introduced by the petitioner."[5] The petitioner's response to the prosecutor's question, therefore, did not open the door to otherwise inadmissible character evidence. *See Kessler*, *supra*; Syl. Pt. 1, *State v. Jackson*, 181 W. Va. 447, 383 S.E.2d 79 (1989) (holding that when general character evidence is adduced, rebuttal evidence may concern reputation and opinion, but not specific acts).

The petitioner's prior convictions were also inadmissible under Rule 609, which specifically governs the use of prior criminal convictions to impeach a witness's credibility. Rule 607 generally permits "[t]he credibility of a witness [to] be attacked and impeached by any party, including the party calling the witness[,]" but that general

[5] This is not to say that a defendant cannot ever open the door to evidence of his or her prior criminal convictions. "[I]t is well within the [trial] court's discretion to deem previously-excluded evidence admissible after the party seeking exclusion 'open[s] the door.'" *United States v. Young*, 916 F.3d 368, 381 (4th Cir. 2019) (quoting *United States v. Blake*, 571 F.3d 331, 348 (4th Cir. 2009)).

authorization does not override the express limitations on impeachment by conviction provided by Rule 609. Those limitations are particularly restrictive when the witness is the defendant in a criminal trial.

Rule 609 provides that, "[f]or the purpose of attacking the credibility of a witness accused in a criminal case, evidence that the accused has been convicted of a crime shall be admitted but *only if* the crime involved perjury or false swearing." W. Va. R. Evid. 609(a)(1) (emphasis added). This restriction codifies the rule first announced by this Court almost fifty years ago, which rejected the use of prior convictions to impeach a criminal defendant except for convictions involving perjury and false swearing. Syl. Pt. 1, *State v. McAboy*, 160 W. Va. 497, 236 S.E.2d 431 (1977), *overruled in part on other grounds by State v. Kopa*, 173 W. Va. 43, 311 S.E.2d 412 (1983). *See also* Syl. Pt. 1, *State v. Toppings*, 166 W. Va. 40, 272 S.E.2d 463 (1980) (holding that "[i]n the trial of a criminal case, a defendant who elects to testify may have his credibility impeached by showing prior convictions of perjury or false swearing, but it is impermissible to impeach his credibility through any other prior convictions."); Syl. Pt. 9, *State v. Clements*, 175 W. Va. 463, 334 S.E.2d 600 (1985) (holding that a testifying criminal defendant may be impeached with prior convictions involving perjury, false swearing, or intentionally deceptive false statements, "but it is impermissible to impeach his credibility through any other prior convictions."). This Court recognized that convictions for unrelated offenses bear no direct relationship to a defendant's credibility as a witness. *McAboy*, 160 W. Va. at 503, 236 S.E.2d at 435. The Court also emphasized that the threat of prior-conviction impeachment

has a documented chilling effect on a defendant's constitutional right to testify, and the prejudice faced by a criminal defendant is categorically different from that faced by an ordinary witness, who risks only some loss of credibility. *Id.* at 507-08, 236 S.E.2d at 435-37; *State v. Toppings*, 166 W. Va. 40, 46, 272 S.E.2d 463, 467 (1980) (explaining that "*McAboy's* central point was that evidence of a prior conviction creates a prejudicial inference in the jury's mind" that the defendant committed the charged offense). We reaffirmed these principles in *Clements*, stating that the restriction is intended to confine impeachment by prior conviction to offenses bearing directly on a defendant's credibility. 175 W. Va. at 471, 334 S.E.2d at 609 (explaining that "[o]ur intention in *McAboy* was to limit the impeachment by prior conviction of a defendant who has not placed his character in issue to only those crimes which would relate directly to the credibility of that defendant."). The distinction between criminal defendants and other witnesses is deliberate. For witnesses other than the accused, Rule 609(a)(2) permits impeachment by evidence of a prior felony conviction, subject to the balancing requirements of Rule 403, or by evidence of a conviction involving dishonesty or false statement whether such conviction was a misdemeanor or felony. For a criminal defendant, however, Rule 609(a)(1) permits impeachment with evidence of a prior conviction *only* when the crime involved perjury or false statement.

Here, the petitioner's misdemeanor convictions did not involve perjury or false swearing and therefore could not be used to impeach his credibility under Rule 609(a)(1). The State could not avoid the rule's limitation by characterizing the convictions

as relevant to the petitioner's general credibility. As *McAboy* and its progeny make clear, the prejudicial propensity inference created by prior convictions is precisely why Rule 609(a)(1) limits impeachment of a testifying criminal defendant to convictions bearing directly on truthfulness. The State's use of the petitioner's prior misdemeanor convictions thus contravened the rule's express limitation and created the very propensity inference against which *McAboy* and *Toppings* caution.

The age of the convictions further underscores the error. Pursuant to Rule 609(b), which imposes additional restrictions on the use of prior convictions for impeachment, a conviction more than ten years old may not be admitted unless the circuit court determines, "in the interests of justice, that its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect," and only upon "reasonable written notice" by the State of its intent to use the conviction. W. Va. R. Evid. 609(b)(1) and (2). This demanding standard recognizes the diminished impeachment value and heightened risk of unfair prejudice associated with remote convictions. Here, the convictions were approximately twenty years old, and the State conceded that it had not provided the petitioner with written notice that it intended to use them. These factors reinforce the impropriety of their admission, and the State identified no specific facts or circumstances that would justify admitting such remote convictions despite their substantial prejudicial effect. *See State v. Greenfield*, 237 W. Va. 773, 782, 791 S.E.2d 403, 412 (2016) (affirming circuit court's determination that Rule 609(b) precluded use of

twenty-nine-year-old conviction as impeachment evidence) (citing W. Va. R. Evid. 609(b)(1)).

Here, the petitioner's twenty-year-old domestic battery and domestic assault convictions had no probative value in determining his credibility, because domestic battery is not a crime bearing on truthfulness. At the same time, their prejudicial potential was substantial. By eliciting evidence that the petitioner had been convicted previously of domestic battery and domestic assault, and re-emphasizing the convictions in its closing argument, the State placed before the jury a basis to judge the petitioner not by the evidence of the charged offenses, but by his past conduct. The admission of the convictions thus violated both the substantive limitations of Rule 609(a) and the heightened protections that Rule 609(b) affords for convictions more than ten years old. We therefore conclude that the circuit court erred in permitting the State to introduce evidence of the petitioner's prior convictions during its cross-examination of the petitioner and during its closing argument.

The State contends that any error in this regard was harmless. We disagree.

To determine whether a nonconstitutional evidentiary error was harmless, the Court must remove the improperly admitted evidence from the State's case and determine whether the remaining evidence was sufficient to support the convictions. Syl. Pt. 2, in part, *State v. Atkins*, 163 W. Va. 502, 261 S.E.2d 55 (1979). Here, the State's case turned primarily on the credibility of the witnesses, most particularly the alleged victim and the

petitioner. Because "the jury's verdict of guilty is taken to have resolved factual conflicts in favor of the State" *id*. at 515, 261 S.E.2d at 62-63, and the jury is the best judge of witness credibility, we conclude that, but for the prejudicial effect of the improperly admitted evidence, discussed below, the evidence was sufficient to support the verdict.

But sufficiency of the remaining evidence is only the first step in the analysis of whether or not an error was harmless. The Court must also determine whether the error had a prejudicial effect on the jury. *Id*. at syllabus point 2. In making that determination, we consider, among other things, whether the inadmissible evidence was repeated or given special emphasis during closing argument; whether the error resulted in a special jury instruction or prompted questions from the jury; the overall strength of the State's case, including whether it involved substantial factual conflicts or was largely circumstantial; whether the inadmissible evidence related to critical testimony by the defendant; and the cumulative effect of the error in the context of the entire trial. *Id*. at 514-15, 261 S.E.2d at 62-63. Those considerations weigh heavily in favor of finding prejudice here.

First, the State improperly introduced the convictions during cross-examination and then re-emphasized them during closing argument. The convictions, therefore, became part of the State's effort to persuade the jury, rather than an isolated evidentiary mistake that quickly receded from the jury's consideration. This repeated exposure is particularly significant because jurors are likely to attach considerable weight to a defendant's criminal record. *See id.* at 520, 261 S.E.2d at 65 (Harshbarger, J.,

dissenting) (observing that "juries are greatly impressed with a defendant's criminal record, probably more so than by any instructions" given by the court). Next, the circuit court gave the jury no limiting instruction explaining any limited purpose for which it could consider the convictions. The jury, therefore, received no instruction directing it away from the obvious and impermissible inference that a person who previously had been convicted of a crime was more likely to have committed the charged offenses. Further, the State's case was not so overwhelming that that the improper evidence could be dismissed as inconsequential. The case largely turned on the competing accounts of the alleged victim and the petitioner, without independent or forensic evidence corroborating the victim's allegations. In that setting, evidence that the petitioner had been convicted previously of domestic battery and domestic assault carried a substantial risk of influencing the jury's assessment of his credibility.

Using improper and prohibited evidence, the State created a circumstance in which the jury could regard the petitioner's answer to its question as false and use that to discredit his testimony. That is particularly damaging in a case where the resolution depended so heavily upon which witness the jury believed. As *Atkins* recognized, "if the error is related to critical testimony of the defendant, the more likely that it will be deemed prejudicial." 163 W. Va. at 515, 261 S.E.2d at 63. Although the State did not expressly argue that the prior convictions demonstrated a propensity to commit the charged offenses, it did not have to; the prejudicial inference was obvious. The State's asserted basis for introducing the convictions provided a vehicle for placing them before the jury and

allowing the jury to draw that inference for itself. The error thus went beyond the admission of improper and inadmissible evidence; it furnished the jury with an improper reason to reject the petitioner's account on the central disputed issue at trial.

Therefore, we cannot say that the error did not affect the verdict. The convictions were approximately twenty years old, bore no relevance to the charged offenses, were inflammatory, and carried a substantial risk that the jury would judge the petitioner based on his prior criminal record rather than the evidence of the charged offenses. Those considerations are particularly significant given the credibility-sensitive nature of the State's case and the State's improper use of the convictions to attack the petitioner's credibility. Accordingly, we must conclude that the error was not harmless.

IV. CONCLUSION

The circuit court erred by permitting the State to introduce and emphasize the petitioner's prior domestic battery and domestic assault convictions in violation of the Rules of Evidence. As the State conceded before this Court, the petitioner did not, by testifying and denying the charges against him, offer evidence of his character or place his character at issue so as to trigger a right by the State to rebut the evidence. Because the error was prejudicial, it cannot be considered to have been harmless. Therefore, the judgment of the circuit court is reversed and this case is remanded for a new trial.

Reversed and remanded.