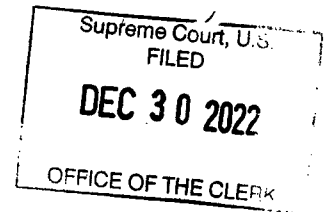


22-6513 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JEREMY DALE BARTRAM,

Petitioner

v.

STATE OF WEST VIRGINIA,

Respondent

**On Petition for a Writ of Certiorari to
the West Virginia Supreme Court of Appeals
Docket No. 21-0791**

PETITION FOR WRIT OF CERTIORARI

**Jeremy Dale Bartram
DCR-Reg. No. 3442251
Mount Olive Correctional Complex & Jail
1 Mountainside Way
Mount Olive, West Virginia 25185**

Petitioner pro se

QUESTION(S) PRESENTED

QUESTION 1.

Does the prosecution's use of 'uncharged misconduct' under Rule 404(b) of the West Virginia Rules of Evidence strip a criminal defendant of the presumption of innocence whereby denying him or her the right to a fair trial?

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES CITED.....	ii
QUESTION(S) PRESENTED.....	i,1,5
LIST OF PARTIES.....	2
RELATED CASES.....	2
OPINIONS BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	3,4,5
REASONS FOR GRANTING THE WRIT.....	5,6,7,8,9,10
CONCLUSION.....	10
PROOF OF SERVICE.....	
CERTIFICATE OF COMPLIANCE.....	

Question(s) Presented:

1. Does the prosecution's use of 'uncharged misconduct' under Rule 404(b) of the West Virginia Rules of Evidence strip a criminal defendant of the presumption of innocence whereby denying him or her the right to a fair trial?

INDEX TO APPENDICES

APPENDIX A: Decision by the West Virginia Supreme Court of Appeals, Docket No. 21-0791

APPENDIX B: State's Notice of Intent to Introduce 404(b) Evidence

APPENDIX C: Defendant's Opposition Memorandum to the State's 404(b) Witnesses

APPENDIX D: Order Granting State's Request to Use 404(b) Evidence

TABLE OF AUTHORITIES CITED

CASE:	PAGE:
 <i>Coffin v. United States</i>	
156 U.S. 432, 453, 15 S. Ct. 394, 39 L. Ed 481 (1895).....	6
 <i>State of West Virginia v. Jeremy Dale Bartram</i>	
Criminal Case No. 18-F-422; Superseding Ind. No. 19-F-228 (Cabell Co., W. Va.).....	3,5
 <i>State of West Virginia v. Jeremy Dale Bartram</i>	
Appeal No. 21-0791 (W. Va. Supreme Court of Appeals).....	2,5
 <i>State v. Pietranton</i>	
140 W. Va. 444, 84 S.E.2d 774 (1954).....	7
 <i>State v. Thompson</i>	
240 W. Va. 406, 813 S.E.2d 59 (2018).....	7
 <i>State v. Willett</i>	
223 W. Va. 394, 674 S.E.2d 602 (2009).....	7,8
 <i>Taylor v. Kentucky</i>	
436 U.S. 478, 56 L. Ed.2d 468, 98 S. Ct. 1930 (1978).....	6,7
 OTHER:	
The National Science Foundation Law and Social Science Program.....	8,9
The Chicago Jury Project.....	8
Studies by the London School of Economics.....	8

LIST OF THE PARTIES

Petitioner submits that all parties appear in the caption of the case on the cover page.

RELATED CASES

State of West Virginia v. Jeremy Dale Bartram

Superseding Ind. No. 19-F-228 (Cabell Co., W. Va.).....

State of West Virginia v. Jeremy Dale Bartram

Appeal No. 21-0791 (W. Va. Supreme Court of Appeals).....

OPINIONS BELOW

State of West Virginia v. Jeremy Dale Bartram

Appeal No. 21-0791, Filed December 6, 2022 (W. Va. Supreme Court of Appeals).....

JURISDICTION

The decision of the West Virginia Supreme Court of Appeals in the case of *State of West Virginia v. Jeremy Dale Bartram*, Appeal No. 21-0791 (**Appendix A**) came on December 6, 2022. This Court's jurisdiction in this case is now being invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. 5.....	
U.S. Const. Amend. 14.....	
W. Va. Const. Article III, §10.....	
Rule 404(b) of the West Virginia Rules of Evidence.....	

STATEMENT OF THE CASE

On June 26, 2018, petitioner Jeremy Dale Bartram (hereinafter “Mr. Bartram”) was arrested and charged with three (3) felony counts of Malicious Wounding, six (6) felony counts of Wanton Endangerment, and two (2) felony counts of attempted First Degree Murder.

On November 7, 2018, Mr. Bartram’s case was presented to the Cabell County grand jury. The next day, on November 8, 2018, the grand jury returned an indictment wherein charging Mr. Bartram with one (1) count of Burglary, three (3) counts of Wanton Endangerment, three (3) counts of Attempted Murder, one (1) count of fleeing, and one (1) count of Obstruction in the case of *State of West Virginia v. Jeremy Dale Bartram*, Criminal Indictment No. 18-F-422.

On August 15, 2019, the State’s prosecuting attorney sought and later secured the return of a superseding indictment [No. 19-F-228] which charged Mr. Bartram with eleven (11) additional counts. Therefore, pursuant to the aforementioned superseding indictment, Mr. Bartram was indicted on one (1) felony count of Burglary, fourteen (14) felony counts of Wanton Endangerment, three (3) felony counts of Attempted First Degree Murder, one (1) misdemeanor count of fleeing without a vehicle, and one (1) misdemeanor count of Obstructing an Officer.

On September 9, 2020, the State’s attorney filed with the Circuit Court of Cabell County

the “State’s Notice of Intent to Introduce 404(b) Evidence.” The State’s attorney proffered that the 404(b) evidence would be introduced for “the purposes of showing motive and intent” in Mr. Bartram’s case. Specifically, evidence that would include that:

“...on January 27, 2014, the defendant was in a physical altercation with Shea Emerick (the daughter of one of the victims in this case along with the sister of one of the victims) and also with Casey Emerick (one of the victims in this case) wherein the defendant grabbed Shea Emerick by the neck, pushed her down on a couch and held her there. Casey Emerick, in an attempt to defend his sister, then got into a fist fight with the defendant.” See, **Appendix B**.

Further evidence to be introduced includes:

“...an incident on December 11th, 2016, where the defendant made a threatening phone call to Vicky Emerick (one of the victims in this case) telling Vicky Emerick that he, the defendant, was going to come to her house and kill her and her family... . Finally, the State intends to introduce other evidence that over the years between 2014 and June, 2018, the defendant had made numerous threats to Shea Emerick, Casey Emerick, Vicky Emerick, and Robert Emerick, namely, that he was going to hurt all of them, that he was going to kill all of them, that he was going to “gut” all of the Emericks like pigs, that he would make Shea Emerick “pay” for things he felt she had done to him, and that he wanted to kill Shea Emerick and that he needed to get rid of her.” See, **Appendix B**.

On May 10, 2021, Mr. Bartram, by counsel, filed his “Defendant’s Opposition Memorandum to the State’s 404(b) Witnesses” (**Appendix C**) wherein arguing that the accusations of domestic dispute involving Defendant in the past cannot be proved the act occurred because no charges were filed.

On May 11, 2021, Mr. Bartram’s trial began. Subsequently, the jury retired to consider its verdict on May 14, 2021, and within a few hours of deliberation had returned its guilty verdict on all counts of the indictment. At a later sentencing hearing, Mr. Bartram received an aggregate

sentence of not less than 28 nor more than 130 years of imprisonment.

On December 20, 2021, Mr. Bartram, by counsel, filed a timely Notice of Appeal and filed with the West Virginia Supreme Court of Appeals, his direct appeal setting forth various assignments of error.

On December 6, 2022, the West Virginia Supreme Court of Appeals rendered its decision (**Appendix A**) in the case of *State of West Virginia v. Jeremy Dale Bartram*, Docket No. 21-0791, affirming the convictions and from which the current petition for a writ of certiorari now follows.

QUESTION 1.

Does the prosecution's use of 'uncharged misconduct' under Rule 404(b) of the West Virginia Rules of Evidence strip a criminal defendant of the presumption of innocence whereby denying him or her the right to a fair trial?

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to determine whether a criminal defendant is stripped of the 'presumption of innocence' at trial by and through the prosecution's use of "uncharged misconduct" under Rule 404(b) of the West Virginia Rules of Evidence whereby denying him or her the right to a fair trial.

Rule 404(b) of the West Virginia Rules of Evidence provides that:

“(b) Crimes, Wrongs, or other acts.

(1) Prohibited uses—Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted uses; notice required.— This evidence may be admissible for another purpose, such as proving motive, opportunity,

intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Any party seeking the admission of evidence pursuant to this subsection must:

(A) provide reasonable notice of the general nature and the specific and precise purpose for which the evidence is being offered by the party at trial; and

(B) do so before trial—or during trial if the court, for good cause, excuses lack of pretrial notice.”

On direct appeal to the West Virginia Supreme Court of Appeals, Mr. Bartram, by counsel, had argued under “**Assignment of Error No. 1,**” that:

“The Circuit Court erred in allowing 404(b) evidence into trial through the witnesses. Two to three witnesses presented evidence that the Petitioner had made threats to them previously in the years leading up to the incidents that gave rise to the indictment. Despite the Court’s limiting instruction, the evidence’s prejudice to Petitioner outweighed its benefits and should have not been admitted. Additionally, the evidence was unreliable and painted Petitioner in an unnecessary negative light to the jury.”

In addressing Mr. Bartram’s claims, the West Virginia Supreme Court of Appeals has noted that “the circuit court gave a limiting instruction cautioning the jury not to consider the evidence as proof of petitioner’s guilt on any of the charges and that the evidence was admitted solely as proof of petitioner’s motive and intent.” **Appendix A**, at p. 2. Further, the Court found that “the evidence of petitioner’s prior bad acts tended to make petitioner’s motive in the shooting more probable and was not unduly prejudicial under West Virginia Rule of Evidence 403,” concluding that there was no abuse of discretion in the record and therefore rejecting the above assignment of error.

In exercising its discretion, the trial court must be zealous to protect the rights of an accused. Every person charged with a crime is entitled to a presumption of innocence until his or her guilt has been proven beyond a reasonable doubt. *Taylor v. Kentucky*, 436 U.S. 478, 56 L. Ed.2d 468, 98

S. Ct. 1930 (1978). “The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Coffin v. United States*, 156 U.S. 432, 453, 15 S. Ct. 394, 39 L. Ed 481 (1895). In West Virginia, the presumption of innocence is an integral part of criminal due process and such presumption is itself a constitutional guarantee embodied in W. Va. Const. art. III, §10. The Supreme Court of Appeals has previously held that “in the trial of a criminal offense, the presumption of innocence existing in favor of a defendant continues through every stage of the trial until a finding of guilt by the jury.” Syl. Pt. 4, *State v. Thompson*, 240 W. Va. 406, 813 S.E.2d 59 (2018)(quoting Syl. Pt. 11, *State v. Pietranton*, 140 W. Va. 444, 84 S.E.2d 774 (1954)). In *State v. Willett*, 223 W. Va. 394, 674 S.E.2d 602 (2009), Justice Ketchum, concurring with the majority’s opinion and writing separately expressed the view that “the use of “bad acts” evidence under Rule 404(b) in criminal trials is now routinely used to convince the jury that they should convict the defendant because he or she is not a nice person.” *Willett*, 674 S.E.2d at 608. Justice Ketchum went on to reason that:

“Modification of Rule 404(b) is Needed to Protect the innocent. We all know the axiom that “[i]n the trial of a criminal offense, the presumption of innocence existing in favor of a defendant continues through every stage of the trial until a finding of guilty by the jury. Syllabus Point 11, *State v. Pietranton*, 140 W. Va. 444, 84 S.E.2d 774 (1954).. But the real world truth is that, when a jury hears evidence that a defendant has committed some bad acts beyond those in the indictment, the jury dispenses with any notions that the defendant is innocent and reviews the evidence from the perspective that the defendant is a bad person. It is undeniable that a jury will be more inclined to convict once they hear that a defendant may have engaged in other “bad acts”—even if the defendant was never charged or convicted for that other conduct.” *Willett*, 674 S.E.2d at 608-609.

Rule 404(b) was originally designed to keep such fundamentally unfair evidence of

‘uncharged misconduct’ away from the jury, allowing the jury to focus on the proper question: does the evidence show the defendant committed the crime with which he or she is currently charged? Notably, “bad acts” evidence continues to be raised as an error in virtually every criminal appeal presented to the West Virginia Supreme Court of Appeals for review. Speaking bluntly in *Willett*, Justice Ketchum goes on to reason that:

“It is obvious that prosecutors are using “bad acts” evidence to prejudice defendants and to divert jurors’ attention from the evidence surrounding the charged crime. This abusive use of uncharged “bad acts” evidence by prosecutors will, in the future, lead to the conviction of an innocent person. Of this, I am convinced. I therefore propose a change to Rule 404(b) in criminal cases.” *Willett*, *supra*, 674 S.E.2d at 609.

Studies by the London School of Economics (LSE) indicate that the admission of a defendant’s “uncharged misconduct” significantly increases the likelihood of a jury finding of liability or guilt. The Chicago Jury Project reached the same conclusion. The Chicago researchers concluded that as a practical matter, the presumption of innocence operates only for defendants without prior criminal records. That evidence of “uncharged misconduct” strips the defendant of the presumption of innocence. If the judge admits a defendant’s uncharged misconduct and the jury thereby learns of the record, the jury will probably use a “different...calculus of probabilities” in deciding whether to convict. Arguably, the use of uncharged misconduct stigmatizes the defendant and predisposes the jury to find him or her liable or guilty. The National Science Foundation Law and Social Science Program sponsored research into the prejudicial impact of various types of evidence. That research confirms the conclusions reached earlier by the LSE and University of Chicago studies. The researchers discovered that laypersons often differ from attorneys in their estimation of the prejudicial effect of evidence and that within each group, laypersons and attorneys

frequently disagree among themselves. However, “the greatest agreement...is found in connection with evidence suggesting immoral conduct by the defendant... .” In another research project supported by the National Science Foundation, Edith Greene and Elizabeth Loftus found the “jurors’ ratings of a defendant’s guilt are higher when crimes are joined than when the offenses are tried separately.”

The presumption of innocence to be afforded a criminal defendant is triggered upon the commencement of a criminal prosecution. That in a criminal prosecution, a defendant has the right to be tried [only] for those offenses found by a grand jury and returned under a true bill of indictment. There can be no doubt that the prosecution’s use of “uncharged misconduct” under Rule 404(b) will inextricably and most assuredly prejudice the defendant and significantly increase the likelihood that he or she will be found guilty. A criminal defendant who is denied the right to a presumption of innocence prior to conviction is thereby denied the right to a fair trial in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

It has long been held that the ‘burden of proof’ in all criminal cases rest exclusively with the prosecution. That in all criminal cases the defendant is entitled to the ‘presumption of innocence’ until his or her guilt has been proven beyond a reasonable doubt. Although different by definition, each are fundamental to a fair trial...and therefore indispensable.

There can be no doubt that by permitting the prosecution to use allegations of “uncharged misconduct” under Rule 404(b) to sway a jury’s verdict, a criminal defendant is stripped of the presumption of innocence thereby rendering his or her right to a fair trial meaningless.

WHEREFORE, Petitioner prays that this Court grant certiorari in this case and all other relief it deems just and appropriate.

Respectfully Submitted,


JEREMY DALE BARTRAM
Petitioner pro se