

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. Fred S., Jr.

No. 12-1182 (W. Va. Dec. 16, 2013) · No. No. 12-1182 (McDowell County, 05-F-181) · Decided December 16, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed Fred S. Jr.'s convictions for third-degree sexual assault, third-degree sexual abuse, and sexual abuse by a custodian. The court held that the trial court did not abuse its discretion by declining to give a separate instruction limiting the jury's consideration of charged conduct to West Virginia, because the evidence and existing instructions adequately established the locations and purposes for which other-acts evidence could be considered. The court alternatively concluded that any instructional error would have been harmless.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II                                                                                                                                                                                                                                                                                                               |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | December 16, 2013                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DOCKET                | No. 12-1182 (McDowell County, 05-F-181)                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Defendant appealed his convictions and final sentencing order to the Supreme Court of Appeals of West Virginia, arguing that the trial court erred by failing to instruct the jury to consider only conduct occurring in West Virginia.                                                                                                                                                                                                                     |
| STANDARD OF REVIEW    | A requested jury instruction is reviewed for abuse of discretion. Jury instructions are reviewed as a whole to determine whether they correctly stated the law, were supported by the evidence, and adequately informed the jury of the issues without misleading it. Harmlessness is assessed under whether, after removing the alleged error, the remaining evidence was independently sufficient and the jury was not substantially swayed by the error. |
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|---------------------------|-------------------------------------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | Memorandum decision; no substantial question of law and no prejudicial error found. |
| <b>PARTIES</b>            | Fred S. Jr. v. State of West Virginia                                               |

## TOPICS

jury instructions criminal procedure evidence appellate procedure harmless error

## PRACTICE AREAS

criminal procedure evidence appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court erred by failing to instruct the jury that it could consider only conduct occurring in West Virginia when determining the defendant's guilt.
2. Whether any error in omitting a more specific territoriality instruction was harmless.

## HOLDINGS

1. The trial court did not abuse its discretion by omitting the requested territoriality instruction because the indictment separately alleged each charged offense in McDowell County, the evidence established the locations of the charged acts, and the jury was adequately informed that the North Carolina incident was not part of the West Virginia charges.
2. Any error in failing to specifically instruct the jury to disregard the North Carolina incident was harmless because the evidence remaining after excluding that incident was independently sufficient to support the verdict and the jury was not substantially swayed by the alleged omission.

## KEY QUOTATIONS

*“Under the Constitution and laws of this state, a crime can be prosecuted and punished only in the state and county where the alleged offense was committed.”* (1)

*“A trial court’s instructions to the jury must be a correct statement of the law and supported by the evidence.”* (1)

*“The jury would have come to the same conclusion even if the trial court had included an instruction that specifically instructed the jury to disregard the one instance of sexual abuse that took place in North Carolina.”* (2)

## FACTUAL BACKGROUND

The victim was the defendant's fourteen-year-old stepdaughter. The State charged fifteen separate sexual assaults or abuses, each alleged to have occurred in McDowell County, West Virginia, and introduced evidence concerning a prior North Carolina sexual-abuse charge and an uncharged North Carolina incident involving the victim. Trial testimony established that the charged acts occurred in West Virginia and that only one separate

incident occurred in North Carolina; the trial court gave a limiting instruction regarding the North Carolina evidence.

## PROCEDURAL HISTORY

Fred S. Jr. was indicted in McDowell County on fifteen counts involving third-degree sexual assault, third-degree sexual abuse, and sexual abuse by a custodian. Following a jury trial, he was convicted on all counts and received a final sentencing order. The Supreme Court of Appeals of West Virginia affirmed the convictions and sentencing order in a memorandum decision.

## DISPOSITION

affirmed

## CASES CITED

- State v. McAllister, 65 W. Va. 97, 63 S.E. 758 (1909)
- State v. Dennis, 216 W. Va. 331, 607 S.E.2d 437 (2004)
- Charleston Apartments Corp. v. Appalachian Elec. Power Co., 118 W. Va. 694, 192 S.E. 294 (1937)
- State v. Hinkle, 200 W. Va. 280, 489 S.E.2d 257 (1996)
- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)

## INSTRUCTIONS FOR AN AI ASSISTANT

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