

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia v. George J.

State v. George J., No. 13-0132 (W. Va. Nov. 8, 2013) · No. No. 13-0132 · Decided November 8, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the denial of George J.'s motion for judgment of acquittal and/or a new trial following convictions for sexual abuse by a parent, guardian, or custodian and incest. The court held that his confession was voluntary, that references to a polygraph examination did not require reversal, and that references to internet pornography were harmless and outside the scope of the specific motion in limine. The decision was issued as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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	November 8, 2013
DOCKET	No. 13-0132
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from the Circuit Court of Marion County's order denying his post-verdict motion for judgment of acquittal and/or a new trial after convictions for sexual abuse by a parent, guardian, or custodian and incest.
STANDARD OF REVIEW	A denial of a motion for a new trial is reviewed with great respect and weight and is reversed when the trial court acted under a misapprehension of the law or evidence. Suppression findings of fact are reviewed for clear error, while questions of law and the ultimate constitutional determination are reviewed de novo. The evidence is construed in the light most favorable to the State as the prevailing party below.
PRECEDENTIAL VALUE	Memorandum decision under West Virginia Rule of Appellate Procedure 21; the source identifies the opinion as published, but the

decision is designated a memorandum decision.

PARTIES

George J. v. State of West Virginia

TOPICS

suppression of evidence

criminal procedure

evidence

appellate procedure

standard of review

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in denying suppression of George J.'s confession on the ground that it was obtained through threats and implied promises of leniency.
2. Whether admission of references to a polygraph examination in the recorded confession required reversal.
3. Whether admission of references to internet pornography violated the circuit court's motion in limine order and required a mistrial or new trial.

HOLDINGS

1. The circuit court properly denied the motion to suppress because the confession was voluntary and was not obtained through coercive threats or promises of leniency.
2. Admission of the recorded confession's vague reference to a polygraph examination did not require reversal because no test results were presented, the reference was limited, and the jury received a cautionary instruction.
3. The circuit court did not err in admitting the references to internet pornography because the motion in limine prohibited a child's testimony about the pornography, not all references to pornography in the recorded confession; in any event, the references were harmless given the substantial evidence of guilt.

KEY QUOTATIONS

“By employing a two-tier standard, we first review a circuit court’s findings of fact when ruling on a motion to suppress evidence under the clearly erroneous standard. Second, we review de novo questions of law and the circuit court’s ultimate conclusion as to the constitutionality of the law enforcement action.” (2)

“Although neither polygraph test results nor the offer or refusal by a defendant to take a polygraph test is admissible in a criminal trial in West Virginia, this Court has recognized that the mere mention of a polygraph, without revealing the results, does not necessarily require the reversal of a criminal conviction.” (3)

FACTUAL BACKGROUND

George J. was accused of sexually abusing his stepdaughter, M.S., from January 2006 through May 2011, beginning when she was eleven years old. Before his arrest, he gave a fifty-eight-minute statement to a state police officer admitting several acts of sexual contact and attributing them to medication. At trial, the recorded confession included references to a proposed polygraph examination and internet pornography, despite the court's order concerning pornography testimony. The jury convicted him, and he received an aggregate sentence of 100 to 200 years.

PROCEDURAL HISTORY

George J. was indicted on ten counts of sexual abuse by a parent, guardian, or custodian and ten counts of incest. His first trial ended in a mistrial after the prosecutor suffered a seizure. At the second trial, the jury convicted him on ten sexual-abuse counts and two incest counts. The circuit court denied his motion for judgment of acquittal and/or a new trial, and he appealed. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Sanders v. Georgia-Pacific Corp., 159 W. Va. 621, 225 S.E.2d 218 (1976)
- Andrews v. Reynolds Memorial Hospital, Inc., 201 W. Va. 624, 499 S.E.2d 846 (1997)
- Lively v. Rufus, 207 W. Va. 436, 533 S.E.2d 662 (2000)
- State v. White, 228 W. Va. 530, 722 S.E.2d 566 (2011)
- State v. Lacy, 196 W. Va. 104, 468 S.E.2d 719 (1996)
- State v. Stuart, 192 W. Va. 428, 452 S.E.2d 886 (1994)
- State v. Lilly, 194 W. Va. 595, 461 S.E.2d 101 (1995)
- State v. Black, 227 W. Va. 297, 708 S.E.2d 491 (2010)
- State v. Keesecker, 222 W. Va. 139, 633 S.E.2d 593 (2008)
- State v. Jones, 220 W. Va. 214, 640 S.E.2d 564 (2006)
- State v. Sugg, 193 W. Va. 388, 456 S.E.2d 469 (1995)
- State v. Bradshaw, 193 W. Va. 519, 457 S.E.2d 456 (1995)
- State v. Farley, 192 W. Va. 247, 452 S.E.2d 50 (1994)
- State v. Beard, 194 W. Va. 740, 461 S.E.2d 486 (1995)
- State v. Lewis, 207 W. Va. 544, 534 S.E.2d 740 (2000)