

APSAC ALERT

Prosecutor's Edition



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Special Points of Interest:

- Prosecutors should educate themselves regarding the dynamics of child sexual abuse and exploitation.
- Attending forensic interviewing training will assist prosecutors handling cases of child sex trafficking.
- Prosecutors should prepare children for cross-examination, including questioning about any prior sexual abuse they may have experienced.

Defendant in Child Sex Trafficking Case Can Cross-Examine Child About Prior Statements

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Brittan Kettles wanted to build a prostitution “empire.” United States v. Kettles, 970 F.3d 637 (6th Cir. 2020). To begin this endeavor, he convinced 18-year-old Stormy Whittemore to work for him, promising her “houses, ... cars and a lot of money” in exchange for her having sex with his customers and recruiting other girls to do the same. Whittemore recruited 13-year-old A.D. to be the first of these other girls. A.D. was Whittemore’s neighbor. After Whittemore recruited her, Kettles arranged for A.D. to have sex with men on six occasions over the next couple days. After a disagreement over the amount of payment, A.D. disclosed to her parents what had happened. Her parents contacted the police and Kettles was arrested several weeks later, after he and Whittemore absconded. Following his arrest, police questioned

Kettles and he confessed that he was assisting Whittemore and A.D. in prostituting. He also admitted that he knew A.D. was a minor, although he said he thought she was 17 at the time. A grand jury indicted Kettles, charging him with one count of sex trafficking a child in violation of 18 U.S.C. §§ 2 and 1591(a)(1), (b)(1), and (c) and a single count of conspiracy to commit sex trafficking of a child in violation of § 1594(c).

A jury convicted Kettles, and the trial court sentenced him to 180 months incarceration. He appealed to the United States Court of Appeals for the Sixth Circuit, raising six issues, only one of which will be discussed here.

Issue

At trial, Kettles sought during cross-examination to question A.D. about three previous sexual assaults. The defendant asserted that the child had made

inconsistent statements to the police and to a counselor regarding these previous assaults. He asserted that the proposed cross-examination would show that A.D. had been untruthful on those other occasions and that the evidence would not be offered as evidence merely of her previous sexual behavior.

The trial court, applying Federal Rule of Evidence 412's prohibition on the presentation of evidence regarding "other sexual behavior" prohibited this line of questioning.

The issue on appeal was whether the trial court erred in denying the defendant the right to cross-examine the child-victim regarding her truthfulness in the reports of the previous sexual assaults.

Holding

The Court of Appeals pointed out that "not all evidence implicating a victim's past sexual activity" is prohibited by FRE 412(a). Rather, the rule prohibits "only two narrow categories of evidence." First, it excludes evidence aimed at proving "that a victim engaged in other sexual behavior." Secondly, the rule prohibits the admission of evidence aimed at proving the "victim's sexual predisposition." Because the evidence the defendant in the case sought to admit was neither of these, the trial court erred in denying Kettles this line of cross-examination.

"The current rule," the court explained, "does not exclude cross-examination into past untruthfulness regarding sexual assaults." The Court cited the advisory committee notes to the 1994 amendments to the rule, which explicitly provide for the admission of evidence of "allegedly false prior claims." The court then applied a harmless error analysis, analyzing the strength of the other evidence offered by the prosecution. This included the child-victim's testimony and videotape footage from a hotel surveillance camera depicting Kettles and Whittemore leading A.D. into a hotel room, waiting outside while a man entered the room, then returning to the room after the man left. Hotel records demonstrated that Kettles had rented the room; he also had a "sexually provocative" photograph of A.D. on his phone. The evidence also included a series of text messages between the three individuals in which they discussed the details of the trafficking, as well as the defendant's admission to a police

officer that he had assisted A.D. in engaging in prostitution and that he knew her to be a minor. Given the overwhelming strength of this evidence, the court found that the erroneous denial of cross-examination on the issue of A.D.'s credibility was harmless. It affirmed his conviction.

Kettles's writ of certiorari to the Supreme Court was denied.

Conclusion

Trying cases of child sexual abuse, sex trafficking, and sexual exploitation involves dynamics that are outside the knowledge and experience of most jurors and many judges. As a result, a defense attorney may try to admit into evidence a child's statements or behaviors in an attempt to undermine the child's credibility. If the defense attorney is successful in admitting this evidence, the prosecutor should be prepared to argue that these prior statements or behaviors are actually consistent with a history of abuse. Consulting with experts may be useful in preparing to meet these lines of defense.

Kettles illustrates the need for prosecutors to be aware of the complexities of a child's "inconsistent statements" and to be able to explain these complexities to a trier of fact. As a starting point, prosecutors should complete basic and advanced forensic interview training in order to better understand how children disclose or otherwise communicate about abuse.

As the *Kettles* case illustrates, once a child is sexually victimized, they are at an elevated risk of subsequent revictimization or exploitation. The National Sexual Violence Resource Center (NSVRC) has published a helpful Research Brief on this issue: [National Sexual Violence Resource Center, Sexual Revictimization Research Brief](#).

About the APSAC Alert: Prosecutor's Edition

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News from APSAC

Child maltreatment work is by nature multidisciplinary; we all share the same goal of ensuring health, safety and justice for children and families. APSAC and the New York Foundling have developed a comprehensive, multidisciplinary Online Course for professionals to help expand their perspective and knowledge base to support effective practice in any child welfare setting. Learn more at apsac.org/online



Group discounts for CAST classrooms available! Contact onlinetraining@apsac.org for more info!

APSAC Child Forensic Interview Clinics

APSAC's four-day Virtual Clinic strives to bridge the gap between research and practice, so that what interviewers do is informed by relevant research at the same time that skills are honed based on feedback from front-line professionals. The Clinic's central focus is learning to listen effectively to children, something that requires genuine engagement, successful use of open-ended prompts, and a recognition that best practices will continue to evolve based on new research and interviewer experience. [Visit the APSAC website for upcoming training dates.](#)



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The American Professional Society on the Abuse of Children (APSAC) is the only national membership association supporting professionals of all disciplines who serve children and families affected by child maltreatment. Zero Abuse Project and APSAC were awarded funds by the U.S. Department of Justice, Office of Justice Programs to create the Trauma-informed Prosecutor Project (TiPP), which works to improve the effectiveness of the investigation and prosecution of child abuse. TiPP will deliver training, provide technical assistance, and create publications for prosecutors and other child abuse multidisciplinary team members. The APSAC Alert, Prosecutor's Edition is a TiPP publication providing updates on case law to professionals prosecuting child maltreatment cases. Suggestions for future issues of the APSAC Alert: Prosecutor's Edition can be sent to info@apsac.org. [Learn more about APSAC membership.](#) [Learn more about TiPP.](#)

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