

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-2535

UNITED STATES OF AMERICA

v.

WILBUR SENAT,
a/k/a Wilby

Wilbur Senat,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(District Court No. 3-13-cr-00558-002)
District Judge: The Honorable Michael A. Shipp

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
July 11, 2017

Before: McKEE, AMBRO, and RESTREPO, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on July 11, 2017.

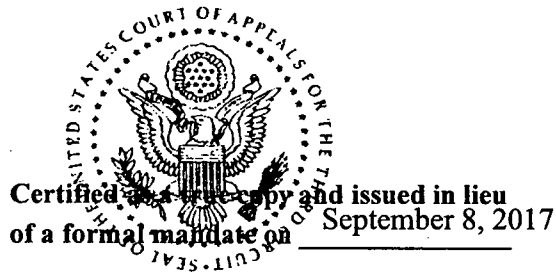
On consideration thereof, it is hereby ORDERED and ADJUDGED by this Court that the District Court's judgment issued on May 16, 2016 is AFFIRMED.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Marcia M. Waldron
Clerk

DATED: August 17, 2017



Teste: *Marcia M. Waldron*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

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FOR THE THIRD CIRCUIT

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v.

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a/k/a Wilby

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Before: McKEE, AMBRO, and RESTREPO, *Circuit Judges*

(Filed: August 17, 2017)

OPINION*

* This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

McKEE, *Circuit Judge*.

Wilbur Senat appeals his convictions for sex trafficking involving a child in violation of 18 U.S.C. § 1591(a) and transportation of a minor to engage in prostitution in violation of 18 U.S.C. § 2423(a). Senat argues that the District Court erred by (1) prohibiting cross-examination of the minor victim regarding her previous sexual encounters, (2) admitting evidence of other crimes Senat and others had committed, and (3) admitting a bus schedule into evidence without proper authentication. We reject each argument and affirm the convictions.

I.

The facts of this case are both detailed and disturbing, and we will not repeat them all here. The broad strokes of the events that led to the conviction of Wilbur Senat for child trafficking and transportation are as follows. Senat coerced or lured fifteen-year-old girl S.C. from her home in Haverstraw, New York, where she lived with her aunt and uncle. After Senat threatened S.C.'s family, she consented to travel with Senat to Philadelphia, Pennsylvania, via New Jersey. In Philadelphia, Senat kept S.C. in a house with no electricity or running water, where Senat and his co-defendant forced S.C. to have sex for money. When she was uncooperative, she was beaten and chained to a pole in the basement. Eventually, another pimp, Samuel Verrier (or "Dre"), took S.C. and forced her to strip and have sex for money for several weeks. Police found S.C. when she was arrested in Bordentown, New Jersey, with Verrier and another pimp.

Senat was subsequently arrested and ultimately found guilty of trafficking and transportation and sentenced to 15 years imprisonment. He appeals.¹

II.

Senat first argues that the District Court violated his Sixth Amendment Confrontation Clause rights when he was prohibited from cross-examining minor victim S.C. regarding two prior allegations of rape. This argument is waived, and, alternatively, it fails on the merits.

Senat argues that in the past, S.C. falsely alleged that four individuals raped her: her father; Alex Alsope; Armante Smith; and an individual named Davante. The Court permitted cross as to two of those allegations (those against S.C.'s father and Alex Alsope) because S.C. admitted the allegations were false, and the government waived any objection. Regarding the latter two allegations, however, S.C. maintained that the allegations were true. Defense counsel responded that she was "just concerned about the lies" and thereafter did not pursue a Rule 412 hearing.² In short, Senat agreed to the ruling he now challenges on appeal. His argument is therefore waived.³

Moreover, even if it had been preserved, Senat could not establish plain error.⁴ The Confrontation Clause does not limit a district court's "wide latitude . . . to impose

¹ The District Court had jurisdiction pursuant to 18 U.S.C. § 3231. We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.

² App. 90–91.

³ See *United States v. Olano*, 507 U.S. 725, 733 (1993) ("[W]aiver is the 'intentional relinquishment or abandonment of a known right.'" (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938))).

⁴ Fed. R. Crim. P. 52(b).

reasonable limits on such cross-examination,” including limits based on “harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.”⁵ Here, evidence of S.C.’s allegations of rape would have had little probative value.⁶ Moreover, the District Court did allow Senat to disclose that S.C. had previously lied about being raped—evidence that supported his defense.

Accordingly, the District Court committed no error in exercising its discretion to exclude evidence of S.C.’s unrelated sexual behavior pursuant to Federal Rule of Evidence 412.⁷

Senat next argues that the District Court committed plain error under Rule 404(b) by admitting evidence of his and other pimps’ prior crimes. We consider each in turn.

Senat argues that it was plain error to permit S.C. to testify about an incident in which she thought she heard Senat shoot another person. S.C. specifically testified that she was in a van with Senat and his friends when the van parked and Senat got out of the car. S.C. then heard two gunshots, and Senat ran back to the van. S.C. also testified that Senat told her later that she had “seen and heard something” she “wasn’t supposed to hear or see” and that if S.C. didn’t leave for Philadelphia with him he would hurt her and her family.⁸ Senat argues that there was “no purpose” in admitting this evidence and “the

⁵ *United States v. John-Baptiste*, 747 F.3d 186, 211 (3d Cir. 2014) (quoting *United States v. Mussare*, 405 F.3d 161, 169 (3d Cir. 2005)).

⁶ *See United States v. Tail*, 459 F.3d 854, 860–61 (8th Cir. 2006) (affirming the district court’s exclusion of a sexual abuse victim’s prior rape allegations that were not “demonstrably false” because they had “only limited probative value”).

⁷ *Id.* at 861.

⁸ App. 112.

evidence was not relevant to an issue in the trial.”⁹ We disagree.

While Rule 404(b) prohibits the admission of evidence of “a crime, wrong, or other act” in order to show the character of the defendant,¹⁰ relevant evidence with a proper evidentiary purpose may be admitted.¹¹ “If uncharged misconduct directly proves the charged offense, it is not evidence of some ‘other’ crime” under Rule 404(b).¹² Here, the fact that S.C. heard gunshots that she thought Senat fired, coupled with Senat’s subsequent threats, demonstrate how Senat was able to “maintain[]” S.C. for the purpose of commercial sex under 18 U.S.C. § 1591(a). Therefore, the Court did not commit plain error in allowing the admission of this evidence.¹³

Senat also argues that, under Rule 404(b) and Rule 403, the District Court improperly admitted S.C.’s testimony that after she was taken from Senat, other pimps forced her to strip and have sex for money before police returned her to her family.¹⁴ We again disagree.

As we have explained, “the purpose of Rule 404(b) is simply to keep from the jury

⁹ Appellant’s Br. 26.

¹⁰ Fed. R. Evid. 404(b).

¹¹ *United States v. Green*, 617 F.3d 233, 249 (3d Cir. 2010).

¹² *Id.*

¹³ Although we ultimately agree that this evidence was relevant to showing threats and coercion, we think it is just barely beyond the reach of Rule 404(b). Given other evidence that was admitted to show the nature of the relationship between S.C. and Senat, the District Court would have been well advised to bar evidence of this incident. Nevertheless, given our standard of review, we cannot conclude that it was plain error to allow it into evidence.

¹⁴ Appellant’s Br. 25.

evidence that *the defendant* is prone to commit crimes or is otherwise a bad person.”¹⁵

Because other pimps’ actions do not adversely reflect on Senat’s character, Rule 404(b) is not implicated here. In fact, defense counsel used evidence of Verrier’s actions to portray him as “the only real pimp in this case,” contrasting him with Senat, whom defense counsel portrayed as simply S.C.’s “ticket out of Haverstraw” to run away from her strict aunt and uncle.¹⁶

Nor did the Court commit plain error by failing to exclude the evidence under Rule 403 balancing. Criminal actions of other pimps are minimally prejudicial to Senat, and the testimony was relevant to why she was arrested and why she initially lied to the police.¹⁷ As we have explained, “when a trial court is not given the opportunity to exercise its discretion in striking the [Rule 403] balance, we will seldom find plain error.”¹⁸ This case is no exception.

Finally, Senat argues that the District Court erred when it admitted a Greyhound bus schedule into evidence to establish the route S.C. and Senat’s bus took to get from New York to Philadelphia.¹⁹ He contends that the bus schedule was not properly

¹⁵ *Green*, 617 F.3d at 249 (emphasis added) (internal quotation marks omitted).

¹⁶ App. 57, 572.

¹⁷ See *Old Chief v. United States*, 519 U.S. 172, 189 (1997) (“People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story’s truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard.”).

¹⁸ *United States v. Gatto*, 995 F.2d 449, 457 (3d Cir. 1993).

¹⁹ Specifically, the bus schedule was evidence that Senat and S.C.’s bus was routed through New Jersey, where the case was brought. App. 425. Because the introduction of the schedule was objected to at trial, our review of the District Court’s interpretation of

authenticated because it was introduced through a government expert who “had no personal knowledge of the bus route.”²⁰ Senat claims the witness was therefore “not qualified to testify regarding this issue.”²¹

This argument is frivolous. Rule 902(11) provides that “records of a regularly conducted activity” that meet the requirements of the “business record exception” in Rule 803(6) “may be authenticated by way of a certificate from the records custodian.”²² Bus schedules are obviously records of a regularly conducted business activity under Rule 803.²³ Whether the bus actually followed the route on the schedule goes to the weight, not the admissibility, of the evidence.²⁴ Therefore, the bus schedule was properly admitted with a certification under Rule 902(11), and it was not necessary that the witness introducing the document otherwise authenticate it.

III.

For the reasons set forth above, we affirm the judgment of the District Court.

the Federal Rules of Evidence is plenary. *United States v. Browne*, 834 F.3d 403, 408 (3d Cir. 2016).

²⁰ Appellant’s Br. 33.

²¹ Appellant’s Br. 29–30.

²² Fed. R. Evid. 902(11).

²³ We also note that Senat likely waived any argument that the record does not meet the elements of Rule 803 based on defense counsel’s characterization of her objection at trial. App. 422 (“I understand it’s a business record. My objection was that I just didn’t think this was the appropriate person to be asking these question[s].”).

²⁴ See *United States v. Catabran*, 836 F.2d 453, 458 (9th Cir. 1988) (“Any question as to the accuracy of the [records] . . . would have affected only the weight of the [records], not their admissibility.”).

OFFICE OF THE CLERK

MARCIA M. WALDRON

CLERK



UNITED STATES COURT OF APPEALS

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September 8, 2017

Mr. William T Walsh
United States District Court for the District of New Jersey
Clarkson S. Fisher Federal Building and United States Courthouse
402 East State Street
Trenton, NJ 08608

RE: USA v. Wilbur Senat
Case Number: 16-2535
District Case Number: 3-13-cr-00558-002

Dear District Court Clerk,

Enclosed herewith is the certified judgment together with copy of the opinion in the above-captioned case(s). The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment is also enclosed showing costs taxed, if any.

Very truly yours,

A handwritten signature in cursive script that reads "Marcia M. Waldron".

Marcia M. Waldron, Clerk

By: s/Shannon/tmm, Case Manager
267-299-4959

cc: Mark E. Coyne
Scott A. Krasny

Deborah P. Mikkelsen

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

VARIAN CHARLES, a/k/a "Bob," *et al.*,

Defendants.

Criminal Action No. 13-558 (MAS)

MEMORANDUM OPINION

This matter comes before the Court on Defendant Wilbur Senat's ("Defendant" or "Senat") motion for post-trial relief pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure (ECF No. 210), and the Court, having considered the parties' submissions, decides the matter without oral argument.

I. Background

On May 1, 2014, Defendant was charged with conspiracy to engage in sex trafficking of children, conspiracy to transport minors to engage in prostitution, and transportation of a minor to engage in prostitution. (ECF No. 85.) In addition, co-defendant Varian Charles ("Mr. Charles"), was charged with conspiracy to engage in sex trafficking of children and conspiracy to transport minors to engage in prostitution. (*Id.*) On July 20, 2015, the trial of Defendant and co-defendant Mr. Charles commenced. (ECF No. 179.) At the conclusion of the Government's case, Defendant moved for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. (Tr. 83:7-88:20, July 27, 2015, ECF No. 206.) The Court reserved decision on Defendant's motion. (*Id.* at 88:21-89:1-3.) On July 29, 2015, the jury convicted Defendant of sex trafficking of children and transportation of a minor to engage in prostitution. (ECF No. 195.) The jury, however,

acquitted both Defendant and Mr. Charles of all conspiracy charges. (*Id.*) On August 26, 2015, Defendant filed this second acquittal motion pursuant to Rule 29 and also moved for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure. (ECF No. 210.)

II. Request for Rule 29 Relief

In support of his motion, Defendant argues that he is entitled to a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure because no rational jury could have concluded that: (a) “[he] ‘knew or recklessly’ disregarded [that] Ms. Cabrera was under 18 years old” (Def.’s Moving Br. 6-8, ECF No. 210-1), or (b) “[he] knew [that] Ms. Cabrera would be caused to engage in prostitution” (*id.* at 8-10). As discussed below, Defendant’s arguments ignore the evidence that was presented to the jury at trial.

A. Legal Standard

Rule 29 provides that “the court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” Fed. R. Crim. P. 29. The defendant seeking relief under Rule 29 bears “a very heavy burden.” *United States v. Anderson*, 108 F.3d 478, 481 (3d Cir. 1997). The court must view the totality of the evidence, resolving competing inferences and credibility issues in the prosecution’s favor. *United States v. Hart*, 273 F.3d 363, 371 (3d Cir. 2001). If “any rational trier of fact could have found proof of guilt beyond a reasonable doubt,” Rule 29 relief must be denied. *United States v. Silveus*, 542 F.3d 993, 1002 (3d Cir. 2008).

B. Analysis

Under 18 U.S.C. § 1591, to convict a defendant for engaging in the sex trafficking of a child, a jury must find that: (1) [t]he defendant knowingly recruited, enticed, harbored, transported, provided, obtained or maintained by any means, a person; (2) defendant did so

knowing, or in reckless disregard of the fact that the person was not eighteen-years old and would be caused to engage in a commercial sex act; and (3) the recruiting, enticing, harboring, transporting, providing, obtaining, or maintaining was in or affecting commerce. *See* Fed. Crim. Jury Instr. 7th Cir. 1591(1) (2012 ed.). Here, Defendant disputes the jury's findings only with respect to the second requirement for a conviction under § 1591.

1. Knowing or Recklessly Disregarding that Victim Was Not Eighteen

Defendant argues that no rational jury could have concluded that he knew the victim's age. (Def.'s Moving Br. 6.) Defendant correctly recognizes that pursuant to § 1591(c), the Government need not prove that a defendant knew or recklessly disregarded that the victim was under eighteen years old if the Defendant had a reasonable opportunity to observe the victim. Defendant, however, contends that the jury instruction on this provision was unclear because the statute does not define what a "reasonable opportunity to observe" means. (*Id.* at 7.) Specifically, Defendant contends that "the jury charge provided no guidance as to whether the focus is properly the reasonableness of the opportunity or the reasonableness of the conclusions drawn from the observations of the alleged victim." (*Id.*) The Court disagrees with Defendant.

As an initial matter, Defendant does not cite any authority for the proposition that "reasonable opportunity to observe" is vague. In addition, the Court's instruction regarding the "reasonable opportunity to observe" followed the exact wording of 18 U.S.C. § 1591(c). (Tr. 24:23-25:1, July 28, 2015, ECF No. 207) ("If you find that the [D]efendant had a reasonable opportunity to observe Samantha Cabrera, you may consider that as evidence that the defendant recklessly disregarded her age."). Here, the Government presented evidence showing that the Defendant met with the victim in August of 2011 and thereafter spoke with her on the phone almost daily. (Tr. 111:6-123, July 21, 2015, ECF No. 202.) In addition, the victim testified that they met

in person, saw each other several days in a row, and that she told the Defendant that she was 15 years old before he brought her to the motel room in Nyack, New York. (Tr. 123:3-131:9, July 21, 2015.) The victim also testified that she and the Defendant had sexual intercourse. (*Id.* at 127:6-128:2; 135:13-14.) Accordingly, there was sufficient evidence for the jury to find that the Defendant had a reasonable opportunity to observe the victim, and thus recklessly disregarded her age.

2. **Knowing or Recklessly Disregarding that Victim Would Be Caused to Engage in Prostitution**

Defendant additionally argues that no rational jury could have found that he knew that the victim would be caused to engage in prostitution. Specifically, Defendant contends that unlike co-defendants Samuel Verrier¹ and Varian Charles, who had connections to prostitution, “[t]here was no evidence presented that [he] was, in fact, engaged in prostitution in any manner.” (Def.’s Moving Br. 8.) Defendant, however, ignores the evidence showing that he caused the victim to engage in prostitution. Under a Rule 29 analysis, the court “must view the evidence in the light most favorable to the verdict, and must presume that the jury has properly carried out its functions of evaluating the credibility of the witnesses, finding the facts and drawing justifiable inferences.” *United States v. Coleman*, 811 F.2d 804, 807 (3d Cir. 1987). Here, the victim testified that the Defendant told her she would be engaging in prostitution, and that she did, in fact, do so at the Defendant’s behest. (Tr. 151:3-156:1; 168:3-21, July 21, 2005.) In addition, Roberto St. Fleur testified that the Defendant arranged for him to have sex with the victim in Nyack, New York. (*Id.* at 53:17-58:25.) Fleur also testified that he and four or five other men had sex with the victim in Nyack on the same night, and that the Defendant asked him to pay after he had sex with the victim.

¹Co-defendant Samuel Verrier was also charged in this case. On August 4, 2014, Mr. Verrier entered a guilty plea to one count of procuring the interstate travel of a person to engage in illicit sexual conduct for the purpose of private financial gain, in violation of 18 U.S.C. § 2423(d).

(*Id.* at 55:21-58:14.) Furthermore, Angelucy Chery testified that, at the Defendant's request, he booked the very same motel room at the Nyack Motor Lodge in which Defendant arranged for the victim to engage in prostitution. (*Id.* at 42:11-43:12.) In addition to this testimony, the Government also presented a hotel receipt and bus tickets that corroborated the victim's testimony. (*Id.* at 45:3-22, 142:11-143:6, 143:13-144:5.) Thus, the Court finds that there was sufficient evidence for the jury to find that the Defendant knew that the victim would be caused to engage in prostitution.²

Accordingly, Defendant's request for Rule 29 relief is denied.

III. Request for Rule 33 Relief

In the alternative, Defendant argues that he is entitled to a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure because: (a) the Government knowingly presented Ms. Cabrera's false testimony (Def.'s Moving Br. 10-13); and (b) evidence of the victim's false claims of sexual impropriety and use of force were improperly excluded pursuant to Rule 412 of the Federal Rules of Evidence (*id.* at 13). As discussed below, Defendant's arguments ignore much of the evidence that was presented to the jury at trial and misstate the law.

A. Legal Standard

Rule 33 of the Federal Rules of Criminal Procedure provides that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33. A district court "can order a new trial only if it believes that there is a serious danger that a miscarriage of justice has occurred—that is, that an innocent person has been convicted." *Silveus*, 542 F.3d at 1004-05 (internal quotation marks omitted). "A court must

² Having found that there was sufficient evidence for the jury to find that the Defendant knew that the victim would be caused to engage in prostitution, the Court also denies Defendant's motion for acquittal with respect to his conviction under 18 U.S.C. § 2423(a), which prohibits the transportation of minors with intent to engage in sexual activity.

grant a motion for a new trial when a reasonable possibility exists that a trial error had a substantial influence on the verdict.” *United States v. Hamilton*, No. 05-876, 2010 WL 1027412, at *1 (D.N.J. Mar. 18, 2010) (internal quotation marks omitted). A Court will find error when the conduct in question was “sufficiently prejudicial to violate [a] defendant’s due process rights.” *United States v. Scarfo*, 685 F.2d 842, 849 (3d Cir. 1982).

B. Analysis

First, the introduction of false testimony, in and of itself, is not sufficient to warrant relief under Rule 33. As the Second Circuit explained in *United States v. Stewart*, a case on which Defendant relies, a new trial will not be granted when false testimony introduced at trial is immaterial to the jury’s decision to convict the defendant. 433 F.3d 273, 297 (2d Cir. 2006) (“[W]hen a trial has been tainted by false testimony, this Court is ‘called upon to strike a fair balance between the need for both integrity and finality in criminal prosecutions’ by determining whether false testimony was prejudicial in the sense that it affected the outcome of the trial.”) (quoting *United States v. Stofsky*, 527 F.2d 237, 239 (2d Cir. 1975)). Here, as discussed above, Ms. Cabrera’s testimony was corroborated on several, critical points. In particular, Ms. Cabrera’s testimony that the Defendant arranged for multiple men to have sex with her in exchange for money in the Nyack Motel Lodge was corroborated by the testimony of Roberto St. Fleur, Angelucy Chery, hotel receipts, and bus tickets. (Tr. 42:11-43:12, 53:17-58:15, July 21, 2015.) In addition, Ms. Cabrera’s testimony that she was under age at that time is corroborated by her birth certificate. Finally, her testimony that Defendant transported her interstate is corroborated by testimony from witnesses who saw her in New York and in Pennsylvania and by bus tickets, a bus schedule, and cell phone records that were entered into evidence. In light of this corroborated testimony that establishes the requisite elements of violations of 18 U.S.C. § 1591(a) and 18

U.S.C. § 2423(a), the testimony that Defendant alleges is false – namely Ms. Cabrera’s overstatement of the number of men that she had sex with in Philadelphia, the duration of her stay in Philadelphia, her statements that there were dead bodies in the basement of the Philadelphia “home”, and that her father sexually abused her – is immaterial to the jury’s decision to convict the Defendant.

Second, Defendant’s argument that the Court incorrectly denied his application to question the victim about her prior sexual conduct is based on a mischaracterization of the record. Federal Rule of Evidence 412, which is commonly known as the federal “Rape Shield Law,” provides that: “(1) evidence offered to prove that a victim engaged in other sexual behavior; or (2) evidence offered to prove a victim’s sexual predisposition” is not admissible in a proceeding involving alleged sexual misconduct. Fed. R. Evid. 412. Pursuant to this rule, the Court precluded Defendant from asking about the victim’s sexual history only when the victim had not admitted that the accusations were false. (Tr. 88:25-89:14, July 21, 2015.) Although the Third Circuit has not ruled on this issue, rulings in the Sixth, Eighth, and Tenth Circuits support this decision. In fact, the Court’s ruling was more permissive than the decisions in each of those Circuits. In contrast to the Court’s ruling, the Sixth, Eighth, and Tenth Circuits all held that a defendant cannot question a victim on her previous allegations of sexual assault at all.³ Here, Defendant had the opportunity to explore fully on cross-examination any false statements that the victim made, whether it concerned her past sexual conduct or not. Defendant was only precluded from questioning the

³ See *United States v. Withorn*, 204 F.3d 790, 795 (8th Cir. 2000) (“[I]mpeaching the victim’s truthfulness and showing her capability to fabricate a story are not recognized exceptions to Rule 412.”) (internal citations omitted); *United States v. Weir*, No. 93-8130, 1994 WL 245230, at *1 (affirming exclusion of evidence of victim’s prior rape allegation) (10th Cir. 1994); *United States v. Cardinal*, 782 F.2d 34, 36 (6th Cir. 1986) (rejecting contention that prior allegations of sexual assault are admissible to impeach credibility).

victim about references to past sexual conduct that the victim contended were true. Thus, Defendant had a full opportunity to, and did, attack Ms. Cabrera's credibility.

Accordingly, there is no serious danger that a miscarriage of justice occurred in this case, and Defendant is not entitled to a new trial.

IV. Conclusion

For the reasons set forth above, Defendant's Motion for Judgment of Acquittal, or in the alternative for a New Trial, is denied.

s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

Dated: January 28, 2016

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILBUR SENAT — PETITIONER
(Your Name)

VS.

UNITED STATES — RESPONDENT(S)

PROOF OF SERVICE

I, WILBUR SENAT, do swear or declare that on this date, November 23,, 2017, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

U.S. SOLICITOR GENERAL

950 PENNSYLVANIA AVENUE ROOM 5616

WASHINGTON, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/06/17, 2017


(Signature)

**Additional material
from this filing is
available in the
Clerk's Office.**