

No Excuses, No Ambiguity: Court Rules Traffickers Liable Even Without Actual Knowledge of Victim's Age

Description

The United States Court of Appeals for the Second Circuit recently released an opinion in *United States v. Concepcion*, No. 23-6337 (2nd Cir. 2025), a case that considers the scope of sex trafficking statutes and the application of mens rea terms. In October 2019, Martin Concepcion met Camilla Rodriguez, a 16-year-old runaway, near a Bronx bodega. Concepcion and his roommates invited Rodriguez, who claimed to be 18, to a liquor store and then back to their apartment. At the apartment, the men served Rodriguez drug-laced alcohol. In a disturbing initiation, Concepcion and his roommates brought Rodriguez into the bathroom, filmed themselves having sex with her, and declared that she was now “part of the group.” From there, Concepcion made it clear to his roommates that Rodriguez was to be exploited to make money, referring to her as “the bag.”

To begin prostituting her that night, the group took sexually explicit photographs of Rodriguez, which they then uploaded to CityXGuide.com. Concepcion and his roommates used this website to post an online advertisement, negotiate with prospective clients, and set prices. Within 24 hours, they had already arranged for Rodriguez to meet with multiple clients. Over the next three weeks, Concepcion and his roommates ran a continuous, nightly sex trafficking operation, dressing Rodriguez in lingerie, applying provocative makeup, and teaching her how to screen for law enforcement. She was prostituted to numerous men each evening, and Concepcion and his roommates took the cash she received. The group also marketed Rodriguez with another woman as part of a “two-girl special.” In total, Concepcion and his roommates amassed over a thousand clients for Rodriguez.

Concepcion and his roommates used violence and coercion to keep Rodriguez cooperative, keeping a firearm in the apartment. They waited, armed, whenever Rodriguez was being exploited. If she resisted or tried to escape, the men responded with threats and physical violence and would search the streets to track her down. Concepcion personally struck Rodriguez in the face when she showed him “attitude,” while his roommate subjected her to additional beatings.

Eventually, concerns about Rodriguez's age were raised. Another woman involved warned Concepcion that Rodriguez “looked young,” and Concepcion's roommates said that she “give[s] young vibes.” Finally, Concepcion and one of his roommates questioned Rodriguez about her “baby face,” and she disclosed that she was only sixteen. Undeterred, the men kept prostituting her with full knowledge of her age. On October 21, 2019, Concepcion and his roommate flaunted the profits of their crimes in an Instagram livestream. Concepcion was accidentally shot in the hand by his roommate, and he promptly left the apartment for good, ending his formal involvement. However, Concepcion stayed in contact with the others as Rodriguez's prostitution continued.

The violence against Rodriguez escalated after Concepcion's departure. On November 7, 2019, law enforcement finally found Rodriguez, who was badly beaten and bruised. Concepcion received a tip to “lay low” once the apartment was raided. Although his former roommates were arrested, Concepcion managed to evade authorities for nearly a year until his arrest in October 2020.

Concepcion was charged with three counts related to sex trafficking of a minor and conspiracy charges. In District Court, he challenged the charge of sex trafficking a minor in violation of 18 U.S.C. § 1591(c), arguing that the knowledge requirement was unconstitutionally vague. The court overruled his objections, and the jury ultimately found him guilty. Concepcion appealed to the Second Circuit, alleging that the district court erred by not finding the language of 18 U.S.C. § 1591(c) to be unconstitutionally vague.

United States Court of Appeals for the Second Circuit

On appeal, Concepcion argued that 18 U.S.C. § 1591(c) was unconstitutionally vague because it failed to provide clear notice of what constitutes criminal conduct. 18 U.S.C. § 1591 criminalizes knowingly recruiting, enticing, harboring, transporting, providing, obtaining, or maintaining a minor for a commercial sex act. The requisite mens rea, or criminal intent, under this statute is actual knowledge, “reckless disregard” of the fact, or a “reasonable opportunity to observe” the victim.

The Court explained that prosecutors do not need to prove the defendant’s actual knowledge of the victim’s age if the defendant had a “reasonable opportunity to observe” the victim. The Court clarified that “repeated, direct contact can satisfy this element.” In this case, Concepcion specifically contended that a “reasonable opportunity to observe” the victim was unconstitutionally vague as applied to him.

Upon examination, the court looked at Concepcion’s living arrangements, physical interactions, and conversations, including the one where she admitted to being a minor. The court found that Concepcion had a “reasonable opportunity to observe” Rodriguez’s age in the three weeks from when he met Rodriguez and left the apartment. Therefore, the court concluded that the statute provides sufficient notice to ordinary individuals as to what type of conduct it proscribes, especially considering Concepcion’s extended and direct contact with Rodriguez. The Second Circuit concluded that 18 U.S.C. § 1591(c) is not unconstitutional and affirmed Concepcion’s conviction.

Key Takeaways

Remember that under federal sex trafficking laws, suspects need not have actual knowledge of a victim’s age if there is evidence that the suspect had ample and repeated opportunities to observe and interact with the victim. Detailed documentation of how suspected sex traffickers interacted with victims and any evidence about knowledge or indications of the victim’s age can protect investigations from constitutional challenges for vagueness.

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