Child Witnesses in Criminal Proceedings

Name

Institution

Course

Date

**Child Witnesses in Criminal Proceedings**

Witnesses play a crucial role in furnishing evidence for and against the respondent in criminal proceedings. The witnesses are an integral part of adducing information that guides the court in arriving at sentencing or acquittal of the suspect[[1]](#footnote-1). The eyewitnesses and victim-witnesses carry some of the most reliable evidence in criminal proceedings. In this respect, all should be done to ensure that people with potentially strong evidence testify during the trial. However, for a witness to be admitted to testify, he or she must be competent, and the right procedures should be used based on age and other factors to get the witness testimony. In this case, the witness must be of sound mind and ready to give a testimony that is admissible in a court of law and of value to the criminal offense at hand. V is allegedly a victim of sexual abuse and perhaps the only star witness in the case against her step-father. However, she is only three years old and subject to special protection[[2]](#footnote-2). The court will benefit more from her testimony if it can successfully interrogate her and her testimony admitted in court.

**V Being a Witness**

Before the enactment of the 1988 and 1991 Criminal Justice Acts, children were discriminated against when it came to testifying in criminal proceedings. The two Acts transformed the role of the child witness in criminal cases by abolishing rules that had discriminated against minor’s testimony[[3]](#footnote-3). The new laws and procedures to accommodate minor’s testimony were developed to give them an opportunity to bear witness where necessary in criminal proceedings. The common law considers all persons as competent to give testimony in a criminal proceeding and are compellable, regardless of their age[[4]](#footnote-4). Fast forward, in 2017, a two-year-old became the first-ever youngest witness in the history of the UK criminal justice system[[5]](#footnote-5). Actually, the witness was a victim of sexual abuse. In this respect, V can bear witness.

**Conducting the interview with V**

Interviewing V should be conducted after determining that she is competent. This is the first step that ought to be undertaken before anything else is done. It would be an exercise in futility to conduct an interview with V when she lacks the basic competency to testify in a criminal case[[6]](#footnote-6). In this respect, she will be subjected to a competency test to determine if she is fit for an interview.

**Competency test**

Before V is allowed to testify, she will have to be subjected to a competency test to ensure that she is competent enough to be a witness. For a child of her age, competency to testify is needed; thus, it must be established that she is able to:

1. remember events accurately
2. able to communicate
3. differentiate between truth and lies

In order to determine the above, the judge will hold a conversation with V, most likely in his or her chambers or within a closed courtroom. During the conversation, the judge should be able to establish whether V has the capacity to communicate well and recall events and communicate clearly. Furthermore, the judge will have to ask age-appropriate questions to try and tease out if V fathoms the value of telling the truth.

V can be called as a witness in the forthcoming trial but under controlled conditions. She is entitled to ‘special protection’ under section 21(1) (b) of the 1999 Act and witness code. Section 35(3) of the Act further provides for offenses under which a witness of any age can be given special protection. Among the offences mentioned in the section are sexual offences captured in the Protection of Children Act 1978 section 35(3) (a) or Part 1 of the Sexual Offences Act 2003. It will be upon the court to ensure that V is afforded special protection throughout the proceedings[[7]](#footnote-7). Protection of the child is not debatable, hence it is a must.

V should not be presented in an open court, where the environment may upset and influence her testimony and for protection purposes. As a child of three years, she may feel shy or intimidate to speak before a stranger or crowds[[8]](#footnote-8). The use of videotaping or one-way screens would be handy in minimizing the impact of the environment on her ability to testify[[9]](#footnote-9). A live link can also be considered to relay her testimony direct to the court during her interrogation. The video-recorded or direct relaying of the interrogation is automatically admissible in court, hence the admissibility of V as a witness.

The child needs persons she is familiar with or comfortable with when giving testimony. In the case of V, her mother or father cannot be around when she is testifying because of their relationship and the crime at hand. The importance of modifying the environment is to enhance the credibility of evidence gathered from the alleged victims of sexual assault[[10]](#footnote-10). It is within the discretional powers of the courts to modify the room or area of interrogation to the level best suited for V to give her testimony freely.

The court will need the help of experts in child development and the investigation to help it get the best and undistorted evidence from V. The help of a police officer who is a specialist in child abuse will be critical in getting credible information from V[[11]](#footnote-11). A Ministry of Justice-registered intermediary should be available to assist the officer. These experts have specialized skills and knowledge in handling children as young as two years old during interviewing and criminal investigations. Most importantly, unlike witnesses aged 14 years and above, V shall not give sworn evidence.

**The Interview with V**

The Victims' Code will be invoked to protect V from any possible intimidation by the interrogators, accused, or room from where she will give her testimony. The code provides room for creating a conducive environment to make it easy for the victim to give testimony[[12]](#footnote-12). The interview should be conducted in an environment that does not intimidate and/or is unfamiliar for the child[[13]](#footnote-13). V should be made as comfortable as possible to allow her to speak freely.

Screens can be put around V when she is testifying to ensure that she does not see the accused or her family members. All efforts necessary should be taken to make her at ease and free to talk. Being a minor, she cannot be interrogated in isolation; a parent or guardian should be around, even if not seen by her - in case of possible interference[[14]](#footnote-14). Closed-circuit cameras can also be applied to allow the suspect to see V during the interview without her seeing him[[15]](#footnote-15). The main objective of using this approach is to ensure that the alleged victim (who is now the witness) is not intimidated by the suspect[[16]](#footnote-16). An intermediary, probably from the Ministry of Justice's register of intermediaries, should be present during the interview[[17]](#footnote-17). Alternatively, and at the same time, her grandmother can be present; however, since she is the one who reported the case, she may not be allowed to be close out of fear that she may influence her testimony. The presence of a relative of foster care staff should be controlled to ensure that the person does not in any way influence how she responds to questions[[18]](#footnote-18).

**Questions**

The type of questions V can be asked should be light, not so technical, and in the language that she can best understand. A three-year-old child may not be fully developed to understand much about sex and the feelings that come with it[[19]](#footnote-19). So, it would be best to ask her if she has ever been hurt by her parents. If she says yes, the interrogator can go ahead and ask which parent. Most importantly, the interrogator should first create a rapport with the child to make her at ease with him or her[[20]](#footnote-20). V will not be able to express herself freely if she is uncomfortable with the interrogator.

The interviewer should ask the question of “who," "when," "what," “how,’ and “where”? The questions should help the interview and the court identify clues that can point out evidence of abuse. A three-year-old child should be able to recall what happened 12 months ago with the help of an intermediary and expert in child abuse. The questions will be tailored to stimulate her mind to try and remember past events[[21]](#footnote-21).

The questions can be asked again and again but reframed to corroborate what she said before and determine her reliability. She should be consistent in her responses, especially with regard to what happened to her, if at all she will say something in relation to being hurt or abused[[22]](#footnote-22). Moreover, she can be asked a question such as, "What is the name of your father - step father - and mother?" The question is meant to test her ability to understand and respond to questions and also build a foundation that will lead to subsequent questions.

The interrogator can also ask V if she loves her mother, then be asked the same about her father - step-father. The same question can be rephrased to ask about if her father is a good person. From the response, the interrogator can trace clues of whether she had issues with her step-father. The ordering of questions should create a flow and support each other in trying to find out the truth about the issue of sexual assault[[23]](#footnote-23). In essence, the question should start from general to specific issue-sexual assault.

**Recording**

Since V is a minor who can be arraigned in an open court, visual recording ought to be undertaken, which can be directly and indirectly relayed in the court for the defense, prosecution, and for judges to access the testimony[[24]](#footnote-24). However, before the decision is made on if the interview will be directly relayed, caution should be exercised to avoid sharing very sensitive information about V. Direct relaying of the interview may also create challenges of controlling irrelevant information.

**Reviewing the recording**

The recording should be viewed with the intention of reviewing it and before a visually recorded interview (VRI) can be released to the defense team[[25]](#footnote-25). The review is necessary to ensure that:

1. The court is satisfied that the recording is reliable, of sufficiently high quality. The recorded vision interview should be of high quality in terms of evidential and technical terms for it to be accepted as credible evidence.
2. The accuracy and exactitude of the record of the visual interview are upheld.
3. The court can establish any form of inconsistency between V’s testimony on record and what she said or told other witnesses.
4. There is a satisfaction that the child is competent enough to understand questions and communicate, with or without special measures being put in place. The competence of the witness must be present before her testimony can be deemed credible.
5. Any potential areas of cross-examination the defense may later explore are noted. The interview should have been conducted in a professional way to prevent possible injurious questioning by the defense side. In essence, the interviewer must have observed Achieving Best Evidence during the interviewing[[26]](#footnote-26). The review will also help determine anyone who was not supposed to be within the interview room or area but was there.
6. Lastly, the review is to determine if any sensitive or irrelevant content should be edited out before the recorded vision interview can be released to the defense side or any other part as the law may require.

The above steps will play a role in ensuring that not only V gets a fair trial but also Skyes. Any possible interference with V at interviewing stage can be easily detected from the review, which may lead to the inadmissibility of the evidence, especially parts that may have credibility issues[[27]](#footnote-27). The interviewer and the reviewer must swear to act in the best interest of justice and avoid any bias challenges.

The scheduling of Skyes trials creates challenges to the reliability of V witness if she testifies. The 12 month period may interfere with her memory because she is still young. However, this is not to say that she will not recall what happened to her. It is believed that children as young as 3 years old can recall and tell about things that happened to them two years ago. The interrogation will rely on her ability to recall what had transpired to her.

**Pre-trial**

V can give pre-trial visual recorded cross-examination or re-examination; the trial judge should determine the decision on this.

**A Fair Trial**

Fairness of the trial is very important in ensuring that justice is delivered to the plaintiff and respondent. To ensure that Skyes get a fair trial, the court will look for a way of determining the credibility of the evidence that V gives. The credibility starts with the manner in which V is interviewed and assessment of her evidence to determine consistency and pattern that may point to reliability or unreliability[[28]](#footnote-28). It is presumed that children rarely lie, unlike the adults who may choose to tell lies.

Moreover, the delay works well for the respondent because the child may forget what happened to her, i.e., if indeed she was sexually assaulted. Before the child was taken to foster care, a medical examination should have been conducted on her body to try and establish if she has been sexually abused[[29]](#footnote-29). The medical report will be of great help, if made available, to try and corroborate the allegation of sexual assault.

The trial will also seek the help of a psychologist to examine the child's mental welfare as far as the issue of sexual abuse is concerned. The psychologist must be able to give a credible report, using his or her expertise, about the possibility of V having been exposed to sexual abuse[[30]](#footnote-30). The importance of using an expert is to try and get reliable evidence. In general, judges, and magistrates are not experts on matters of psychology and investigation[[31]](#footnote-31). In this respect, an expert in psychology would help the court to understand what transpired and if the allegation holds some truth.

.

Bibliography

**Primary Sources**

Youth Justice and Criminal Evidence Act 1999.

Sexual Offences Act 2003

Protection of Children Act 1978

**Secondary Sources**

'Child Abuse - Children as Witnesses in Criminal Proceedings' (Citizensadvice.org.uk, 2021) <https://www.citizensadvice.org.uk/family/children-and-young-people/child-abuse/police-involvement/child-abuse-children-as-witnesses-in-criminal-proceedings/> accessed 28 February 2021.

'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021.

Cooper A, Quas J, and Cleveland K, 'The Emotional Child Witness: Effects On Juror Decision-Making' (2014) 32 Behavioral Sciences & the Law.

Mellor A, and Dent H, 'Preparation Of The Child Witness For Court' (1994) 3 Child Abuse Review.

'Safeguarding Children As Victims And Witnesses | The Crown Prosecution Service' (Cps.gov.uk, 2019) <https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses> accessed 28 February 2021

Salmon N, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021.

1. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-1)
2. 'Safeguarding Children As Victims And Witnesses | The Crown Prosecution Service' (Cps.gov.uk, 2019) <https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses> accessed 28 February 2021. [↑](#footnote-ref-2)
3. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-3)
4. Youth Justice and Criminal Evidence Act 1999, section 53 (1). [↑](#footnote-ref-4)
5. Natasha Salmon, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021. [↑](#footnote-ref-5)
6. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-6)
7. Protection of Children Act 1978 section 35 (3) (c,). [↑](#footnote-ref-7)
8. Anne Mellor and Helen R. Dent, 'Preparation Of The Child Witness For Court' (1994) 3 Child Abuse Review. [↑](#footnote-ref-8)
9. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-9)
10. 'Safeguarding Children As Victims And Witnesses | The Crown Prosecution Service' (Cps.gov.uk, 2019) <https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses> accessed 28 February 2021. [↑](#footnote-ref-10)
11. Natasha Salmon, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021. [↑](#footnote-ref-11)
12. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-12)
13. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-13)
14. 'Child Abuse - Children As Witnesses In Criminal Proceedings' (Citizensadvice.org.uk, 2021) <https://www.citizensadvice.org.uk/family/children-and-young-people/child-abuse/police-involvement/child-abuse-children-as-witnesses-in-criminal-proceedings/> accessed 28 February 2021. [↑](#footnote-ref-14)
15. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-15)
16. Alexia Cooper, Jodi A. Quas and Kyndra C. Cleveland, 'The Emotional Child Witness: Effects On Juror Decision-Making' (2014) 32 Behavioral Sciences & the Law. [↑](#footnote-ref-16)
17. Natasha Salmon, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021. [↑](#footnote-ref-17)
18. 'Safeguarding Children As Victims And Witnesses | The Crown Prosecution Service' (Cps.gov.uk, 2019) <https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses> accessed 28 February 2021. [↑](#footnote-ref-18)
19. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-19)
20. Children Act 1978 section 35 (3) (c,). [↑](#footnote-ref-20)
21. Natasha Salmon, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021. [↑](#footnote-ref-21)
22. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-22)
23. Ibid. [↑](#footnote-ref-23)
24. Natasha Salmon, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021. [↑](#footnote-ref-24)
25. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-25)
26. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-26)
27. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-27)
28. Natasha Salmon, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021. [↑](#footnote-ref-28)
29. 'Children As Witnesses In Criminal Proceedings - Inbrief.Co.Uk' (InBrief.co.uk, 2021) <https://www.inbrief.co.uk/court-proceedings/child-witnesses/> accessed 28 February 2021. [↑](#footnote-ref-29)
30. Ibid. [↑](#footnote-ref-30)
31. Natasha Salmon, 'Two-Year-Old Sexual Assault Victim Becomes Youngest Ever Court Witness' (The Independent, 2017) <https://www.independent.co.uk/news/uk/crime/two-year-old-girl-evidence-court-child-sexual-abuse-predator-jailed-youngest-history-a7994316.html> accessed 28 February 2021. [↑](#footnote-ref-31)