

NO. \_\_\_\_\_

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**IN THE**

**SUPREME COURT OF THE UNITED STATES**

October Term, 2018

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**ROBERT RYAN POWELL**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit

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**APPENDIX TO THE PETITION  
FOR A WRIT OF CERTIORARI**

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*Counsel of Record for Petitioner*

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## **APPENDIX A**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 31 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
ROBERT RYAN POWELL,  
Defendant-Appellant.

Nos. 16-30253  
17-30012  
D.C. No.  
2:15-cr-00244-RAJ-1  
Western District of Washington,  
Seattle

ORDER

Before: BYBEE and N.R. SMITH, Circuit Judges, and ANTOON,\* District Judge.

The panel judges have voted to deny appellant's petition for panel rehearing or rehearing en banc. Appellant's petition for panel rehearing or rehearing en banc, filed August 7, 2018, is DENIED.

\* The Honorable John Antoon II, United States District Judge for the Middle District of Florida, sitting by designation.

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUN 20 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,  
v.  
Plaintiff-Appellee,  
ROBERT RYAN POWELL,  
Defendant-Appellant.

Nos. 16-30253  
17-30012  
D.C. No.  
2:15-cr-00244-RAJ-1  
ORDER

Before: BYBEE and N.R. SMITH, Circuit Judges, and ANTOON,\* District Judge.

Appellant's unopposed motion to extend time to file a petition for rehearing with suggestion for rehearing en banc is granted.

The deadline for filing a petition for rehearing is extended to August 17, 2018.

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\* The Honorable John Antoon II, United States District Judge for the Middle District of Florida, sitting by designation.

**FILED**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUN 15 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT RYAN POWELL,

Defendant-Appellant.

Nos. 16-30253  
17-30012

D.C. No.  
2:15-cr-00244-RAJ-1

**MEMORANDUM\***

Appeal from the United States District Court  
for the Western District of Washington  
Richard A. Jones, District Judge, Presiding

Argued and Submitted June 4, 2018  
Seattle, Washington

Before: BYBEE and N.R. SMITH, Circuit Judges, and ANTOON, \*\* District Judge.

Defendant Robert Ryan Powell appeals his convictions on two counts of transporting a juvenile with intent to engage in prostitution under 18 U.S.C. § 2423(a) and one count of sex trafficking by force, fraud, or coercion under 18

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable John Antoon II, United States District Judge for the Middle District of Florida, sitting by designation.

U.S.C. § 1591(a)(1). We affirm.

1. Powell waived his challenge to the jury instructions by affirmatively stating that he had no objection to the court's failure to give any of his requested jury instructions. His contention that the jury instructions constructively amended the superseding indictment is thus not reviewable. *See United States v. Perez*, 116 F.3d 840, 845 (9th Cir. 1997) (en banc) ("Forfeited rights are reviewable for plain error, while waived rights are not.").

And even if we found this issue merely forfeited rather than waived, no plain error was shown. "For a constructive amendment to inhere, jury instructions must 'diverge materially' from the indictment and evidence must have been 'introduced at trial that would enable the jury to convict the defendant for conduct with which he was not charged.'" *United States v. Alvarez-Ulloa*, 784 F.3d 558, 570 (9th Cir. 2015) (quoting *United States v. Ward*, 747 F.3d 1184, 1191 (9th Cir. 2014)).

Neither of these circumstances is present here.

2. The superseding indictment was not duplicitous, nor did it deprive Powell of adequate notice of the sex trafficking charge or his right of jury unanimity. "In reviewing an indictment for duplicity, our task is not to review the evidence presented at trial to determine whether it would support charging several crimes rather than one, but rather solely to assess whether the indictment itself can be read to charge only one violation in each count." *United States v. Yarbrough*, 852 F.2d

1522, 1530 (9th Cir. 1988) (internal quotation marks and citation omitted). Count Three of the superseding indictment easily passes this assessment, and thus Powell’s duplicity argument fails.

The superseding indictment also provided Powell with sufficient notice of the charge against him in Count Three. An indictment’s sufficiency is measured by whether it “contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet.” *Russell v. United States*, 369 U.S. 749, 763 (1962) (internal quotation marks and citation omitted). “An indictment must provide the essential facts necessary to apprise a defendant of the crime charged; it need not specify the theories or evidence upon which the government will rely to prove those facts.” *United States v. Cochrane*, 985 F.2d 1027, 1031 (9th Cir. 1993) (per curiam). Count Three of the superseding indictment satisfies these standards.

Powell was not deprived of his right to a unanimous jury verdict. Although Powell asserts that there were three “distinct” time periods involved and the jurors may not have come to an agreement on which of the three time periods was the one in which Powell trafficked the victim, Count Three charged, and the Government presented evidence at trial establishing, ongoing trafficking of the victim by Powell during the timeframe alleged in the superseding indictment—“beginning in or about January 2014, and continuing until on or about January 13, 2015,” the date

of Powell's arrest. Moreover, Powell did not request a specific unanimity jury instruction beyond the general instruction given by the district court.

3. The district court did not abuse its discretion in excluding evidence that Powell sought to introduce of the adult victim's sexual conduct before and after Powell trafficked her. And even if the district court erred in excluding this evidence, reversal would not be warranted because any erroneous exclusion was harmless. *See United States v. Yazzie*, 59 F.3d 807, 815 (9th Cir. 1995).

4. The district court did not abuse its discretion in admitting, under Federal Rules of Evidence 403 and 404(b), evidence of the facts underlying Powell's 2007 Nevada conviction for transporting a prostitute. *See United States v. Romero*, 282 F.3d 683, 688 (9th Cir. 2002). That evidence was similar to the charged conduct, tended to show Powell's intent and motive, and was not too remote in time. *See United States v. Rendon-Duarte*, 490 F.3d 1142, 1144 (9th Cir. 2007). And although the district court's admission of evidence regarding Powell's 2008 California assault conviction is troubling due to its violent nature and the danger of unfair prejudice, even if admission of that evidence was an abuse of discretion reversal would be warranted "only if the error was not harmless." *Romero*, 282 F.3d at 688. Here, any error was harmless because "it is more probable than not that the error did not materially affect the verdict." *United States v. Liera*, 585 F.3d 1237, 1244 (9th Cir. 2009) (internal quotation marks omitted).

5. The district court did not plainly err in allowing witness N.C. to testify.

After the Government raised a concern about the witness's competency due to marijuana use, the district court insisted on voir dire of the witness before she testified before the jury. After that voir dire, neither side objected to her competency. The witness then provided coherent testimony both that afternoon and the next morning. Powell failed to preserve this issue, and he fails to establish any error, let alone a plain error.

**AFFIRMED.**

## **APPENDIX B**

**UNITED STATES DISTRICT COURT**  
**Western District of Washington**

UNITED STATES OF AMERICA

v.

ROBERT RYAN POWELL

**AMENDED JUDGMENT IN A CRIMINAL CASE**

Case Number: 2:15CR00244RAJ-001

USM Number: 14301-273

Allen R. Bentley

Defendant's Attorney

Date of Original Judgment: 10/28/2016

(Or Date of Last Amended Judgment)

**Reason for Amendment:**

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))  
 Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))  
 Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))  
 Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))  
 Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))  
 Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))  
 Direct Motion to District Court Pursuant  
 28 U.S.C. § 2255 or  18 U.S.C. § 3559(c)(7)  
 Modification of Restitution Order (18 U.S.C. § 3664)

**THE DEFENDANT:**

- pleaded guilty to count(s) \_\_\_\_\_
- pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) 1 – 3 of the Superseding Indictment after a plea of not guilty. Jury Verdict: 06/24/2016

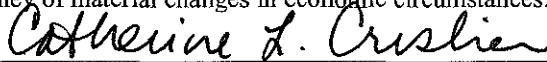
The defendant is adjudicated guilty of these offenses:

<b>Title &amp; Section</b>	<b>Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
18 U.S.C. § 2423(a)	Transportation of a Juvenile with Intent to Engage in Prostitution	08/25/2014	1
18 U.S.C. § 2423(a)	Transportation of a Juvenile with Intent to Engage in Prostitution	08/25/2014	2
18 U.S.C. §§ 1591(a)(1), (b)(1) and 2	Sex Trafficking by Force, Fraud, and Coercion	01/13/2015	3

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) 4 of the Superseding Indictment
- Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

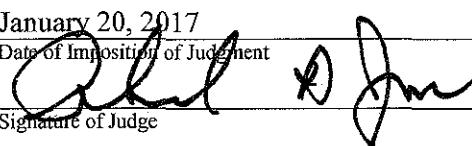
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.



Assistant United States Attorney

January 20, 2017

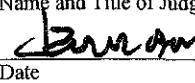
Date of Imposition of Judgment



Signature of Judge

Richard A. Jones, United States District Judge

Name and Title of Judge



20. 2014

Date

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

Judgment — Page 2 of 8

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

198 months

- The court makes the following recommendations to the Bureau of Prisons:

FCI Miami

- The defendant is remanded to the custody of the United States Marshal.

- The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_  
 as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

### **SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of :

10 years

### **MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5.  You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached pages.

DEFENDANT: **ROBERT RYAN POWELL**  
 CASE NUMBER: 2:15CR00244RAJ-001

### **STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

### **U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature

Date

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

### SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. Defendant must contribute towards the cost of any programs, to the extent defendant is financially able to do so, as determined by the U.S. Probation Officer. In addition to urinalysis testing that may be a part of a formal drug treatment program, the defendant shall submit up to eight (8) urinalysis tests per month.
2. The defendant shall submit his or her person, property, house, residence, storage unit, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
3. Restitution in the amount of \$ 67,221.00 is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall not be waived.
4. The defendant, who is required to register under the Sex Offender Registration and Notification Act, must comply with all requirements of that Act. The defendant shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any jurisdiction where the person resides, is employed, or is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of the residence. Registration must occur within three business days after sentencing if the defendant is sentenced to probation or time served, or a term of imprisonment and is not remanded. If the defendant is remanded, registration must occur within three business days of release.
5. The defendant shall participate in a sexual deviancy evaluation conducted by a sexual deviancy treatment provider, as directed and approved by the U.S. Probation Officer. The treatment provider shall be trained and experienced in the treatment of sexual deviancy, and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual deviancy evaluation may include psychological and physiological testing. The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of the evaluation, according to his/her ability, as determined by the U.S. Probation Officer.

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

6. The defendant shall actively participate and make reasonable progress in a certified sexual deviancy treatment program, as designated by the U.S. Probation Officer. The sexual deviancy treatment program shall follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The program shall offer individual and group sessions, and appropriate testing, to determine the defendant's patterns of sexual arousal, and to monitor the defendant's progress and compliance with treatment goals and conditions of supervision. The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of treatment, according to his/her ability, as determined by the U.S. Probation Officer.
7. The defendant shall be required to submit to periodic polygraph testing at the discretion of the probation office as a means to ensure that he or she is in compliance with the requirements of his or her supervision or treatment program.
8. The defendant shall follow all rules, to include other lifestyle restrictions by the defendant's therapist, and continue with those rules and restrictions as they pertain to avoiding risk situations throughout the course of the defendant's supervision.
9. The defendant shall have no direct or indirect contact with known prostitutes or pimps, by any means, including in person, by mail, electronic means, or via third parties, without the approval of the probation officer.
10. The defendant shall not frequent or loiter in areas known for pimping and/or prostitution activity.
11. The defendant shall have no direct or indirect contact with his victims, CSC, NRC, and Brittany Nicole Miller, or any members of their families, by any means, including in person, by mail, electronic means, or via third parties, without the approval of the probation officer. If any contact occurs, the defendant shall immediately leave the area of contact and report the contact to the probation officer, within one business day.
12. The defendant shall consent to the U.S. Probation Office conducting ongoing monitoring of his/her computer(s), hardware, and software, and any/and all electronic devices/media. The monitoring may include the installation, at the defendant's expense, of hardware or software systems which allow evaluation of his/her computer use. Monitoring may also include the retrieval and copying of all data from his/her computer(s) or any/and all other electronic devices/media. The defendant shall also comply with the requirements of the U.S. Probation Computer Monitoring Program as directed.
13. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300	\$ None	\$ Waived	\$

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
B. M.	\$66,111.00	\$66,111.00	
M. M.	\$910.00	\$910.00	
C. C.	\$425.00	\$100.00	
N. C.	\$560.00	\$100.00	
TOTALS	<u>\$68,006.00</u>	<u>\$ 67,221.00</u>	

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_.
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- the interest requirement is waived for the  fine  restitution
- the interest requirement for the  fine  restitution is modified as follows:
- The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.
- During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

**UNITED STATES DISTRICT COURT**  
Western District of Washington

UNITED STATES OF AMERICA

v.

ROBERT RYAN POWELL

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 2:15CR00244RAJ-001

USM Number: 14301-273

Allen R. Bentley

Defendant's Attorney

**THE DEFENDANT:**

- pleaded guilty to count(s) \_\_\_\_\_
- pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- was found guilty on count(s) 1 – 3 of the Superseding Indictment \_\_\_\_\_

Jury Verdict: 06/24/2016

The defendant is adjudicated guilty of these offenses:

<b>Title &amp; Section</b>	<b>Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
18 U.S.C. § 2423(a)	Transportation of a Juvenile with Intent to Engage in Prostitution	08/25/2014	1
18 U.S.C. § 2423(a)	Transportation of a Juvenile with Intent to Engage in Prostitution	08/25/2014	2
18 U.S.C. §§ 1591(a)(1), (b)(1) and 2	Sex Trafficking by Force, Fraud, and Coercion	01/13/2015	3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) 4 of the Superseding Indictment

Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Catherine L. Crisler  
Assistant United States Attorney

October 28, 2016  
Date of Imposition of Judgment

Richard A. Jones  
Signature of Judge

Richard A. Jones, United States District Judge  
Name and Title of Judge

October 28, 2016  
Date

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

198 months

The court makes the following recommendations to the Bureau of Prisons: FCI Miami

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
  - at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_
  - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - before 2 p.m. on \_\_\_\_\_
  - as notified by the United States Marshal.
  - as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

10 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or from imprisonment and at least two periodic drug tests thereafter, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. Defendant must contribute towards the cost of any programs, to the extent defendant is financially able to do so, as determined by the U.S. Probation Officer. In addition to urinalysis testing that may be a part of a formal drug treatment program, the defendant shall submit up to eight (8) urinalysis tests per month.
2. The defendant shall submit his or her person, property, house, residence, storage unit, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
3. Restitution in the amount of \$ TBD is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall not be waived.
4. The defendant, who is required to register under the Sex Offender Registration and Notification Act, must comply with all requirements of that Act. The defendant shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any jurisdiction where the person resides, is employed, or is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of the residence. Registration must occur within three business days after sentencing if the defendant is sentenced to probation or time served, or a term of imprisonment and is not remanded. If the defendant is remanded, registration must occur within three business days of release.
5. The defendant shall participate in a sexual deviancy evaluation conducted by a sexual deviancy treatment provider, as directed and approved by the U.S. Probation Officer. The treatment provider shall be trained and experienced in the treatment of sexual deviancy, and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual deviancy evaluation may include psychological and physiological testing. The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of the evaluation, according to his/her ability, as determined by the U.S. Probation Officer.
6. The defendant shall actively participate and make reasonable progress in a certified sexual deviancy treatment program, as designated by the U.S. Probation Officer. The sexual deviancy treatment program shall follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The program shall offer individual and group sessions, and appropriate testing, to determine the defendant's patterns of sexual arousal, and to monitor the defendant's progress and compliance with treatment goals and conditions of supervision. The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of treatment, according to his/her ability, as determined by the U.S. Probation Officer.

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001

7. The defendant shall be required to submit to periodic polygraph testing at the discretion of the probation office as a means to ensure that he or she is in compliance with the requirements of his or her supervision or treatment program.
8. The defendant shall follow all rules, to include other lifestyle restrictions by the defendant's therapist, and continue with those rules and restrictions as they pertain to avoiding risk situations throughout the course of the defendant's supervision.
9. The defendant shall have no direct or indirect contact with known prostitutes or pimps, by any means, including in person, by mail, electronic means, or via third parties, without the approval of the probation officer.
10. The defendant shall not frequent or loiter in areas known for pimping and/or prostitution activity.
11. The defendant shall have no direct or indirect contact with his victims, CSC, NRC, and Brittany Nicole Miller, or any members of their families, by any means, including in person, by mail, electronic means, or via third parties, without the approval of the probation officer. If any contact occurs, the defendant shall immediately leave the area of contact and report the contact to the probation officer, within one business day.
12. The defendant shall consent to the U.S. Probation Office conducting ongoing monitoring of his/her computer(s), hardware, and software, and any/and all electronic devices/media. The monitoring may include the installation, at the defendant's expense, of hardware or software systems which allow evaluation of his/her computer use. Monitoring may also include the retrieval and copying of all data from his/her computer(s) or any/and all other electronic devices/media. The defendant shall also comply with the requirements of the U.S. Probation Computer Monitoring Program as directed.
13. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001**CRIMINAL MONETARY PENALTIES**

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b> \$ 300	\$ Waived	\$ TBD

- The determination of restitution is deferred until \_\_\_\_\_ *An Amended Judgment in a Criminal Case (AO 245C)*  
will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.  
If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>	

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- the interest requirement is waived for the  fine  restitution
- the interest requirement for the  fine  restitution is modified as follows:
- The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **ROBERT RYAN POWELL**  
CASE NUMBER: 2:15CR00244RAJ-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.
- During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

1 The Honorable Richard A. Jones  
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10 UNITED STATES DISTRICT COURT FOR THE  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT SEATTLE  
13  
14

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.  
18

19 ROBERT RYAN POWELL,  
20

21 Defendant.  
22

23 NO. CR15-244 RAJ  
24  
25

26 ORDER ON DEFENDANT'S MOTION  
27 FOR A JUDGMENT OF ACQUITTAL  
28 ON COUNT 3

16 This matter comes before the Court on Defendant's motion for a judgment of acquittal  
17 on Count 3. Dkt. #249. For the reasons stated herein, the Court **DENIES** the motion.

18 On June 24, 2016, following a multi-day trial, a jury convicted Defendant of  
19 transporting C.C. and N.C., two juveniles, across state lines for the purpose of prostitution,  
20 and of sex trafficking B.M., an adult victim, through force, fraud, and coercion. Dkt. # 241.  
21 Prior to the trial, Defendant sought to dismiss Count 3 because he believed that the  
22 Government "lumped" several distinct offenses into a single count of sex trafficking through  
23 force, fraud and coercion. Dkt. # 249, at p. 2. The Court denied Defendant's motion to  
24 dismiss Count 3, finding that that statutory scheme behind the charge clearly treated it as a  
25 continuing offense. Dkt. # 111, at p. 8. The Court further found that separating the offenses  
26 into additional counts would expose the Defendant to "harsher penalties and guideline  
27 calculations." *Id.* Defendant now requests a judgment of acquittal on Count 3 because he  
28

ORDER ON DEFENDANT'S  
MOTION FOR JUDGMENT OF ACQUITTAL  
ON COUNT 3 - 1

1 | contends that the Government's evidence at trial showed three different periods of  
2 | association between Defendant and B.M. rather than one continuous period in which B.M.  
3 | was sex trafficked. Dkt. ## 249, 259. The Government opposes the motion. Dkt. # 256.

4 |       Upon a defendant's motion for a judgment of acquittal, the Court may "set aside the  
5 | verdict and enter an acquittal." Fed. R. Crim. P. 29(c). The Court will do so if, when  
6 | viewing the evidence in the light most favorable to the Government, the Court finds that  
7 | there is insufficient evidence to sustain a conviction. *United States v. Williams*, 547 F.3d  
8 | 1187, 1196-1199 (9th Cir. 2008); *see also United States v. Olsen*, Nos. CR-11-6001-EFS-1  
9 | through -8, 2013 U.S. Dist. LEXIS 97783, \*5 (E.D. Wash. 2013); Fed. R. Crim. P. 29(a).  
10 | The Court agrees with the Government that the jury was presented with evidence showing  
11 | Defendant's continuous communications with B.M. during the time period. Even if B.M.  
12 | was not in Defendant's company during the entire period, and even if she contacted other  
13 | pimps during the period, this does not erase the evidence showing Defendant's constant use  
14 | of email messages, text messages, or phone calls to recruit and entice B.M. to return to work  
15 | for him as a prostitute. The jury had the opportunity to consider evidence of a "break" in  
16 | Defendant's conduct, and ultimately the jury rejected this theory. When viewed in the light  
17 | most favorable to the Government, the Court finds the evidence sufficient to sustain a  
18 | conviction on Count 3.

19 |       For these reasons, the Court **DENIES** the Defendant's motion. Dkt. #249.  
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DATED this 29th day of August, 2016.



24 |       The Honorable Richard A. Jones  
25 |       United States District Judge  
26 |  
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28 |

1 The Honorable Richard A. Jones  
2  
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5  
67 UNITED STATES DISTRICT COURT FOR THE  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ROBERT RYAN POWELL,  
14 Defendant.15  
16 NO. CR 15-244 RAJ17  
18 VERDICT FORM19  
20 WE, THE JURY, unanimously find as follows:21  
22  
23 **Count 1:** Transportation of a Juvenile, C.C., with Intent to Engage in  
24 Prostitution, in violation of Title 18, United States Code, Section 2423(a):25        Not Guilty        Guilty26  
27  
28 **Count 2:** Transportation of a Juvenile, N.C., with Intent to Engage in  
Prostitution, in violation of Title 18, United States Code, Section 2423(a):29        Not Guilty        Guilty

30 //

31 //

32 //

1      **Count 3:** Sex Trafficking of B.M. by Force, Fraud and Coercion, in  
2 violation of Title 18, United States Code, Sections 1591(a)(1) and 1591(b)(1):

3       Not Guilty       Guilty

4

5      **Count 4:** Transportation of B.M. for the Purpose of Prostitution Through  
6 Coercion and Enticement, in violation of Title 18, United States Code, Section  
7 2422(a):

8       Not Guilty       Guilty

9

10     DATED this 24 day of JUNE, 2016.

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14     PRESIDING JUROR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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UNITED STATES OF AMERICA,	)
	)
Plaintiff,	) CASE NO. CR15-00244RAJ
	)
v.	) SEATTLE, WASHINGTON
	) June 24, 2016
ROBERT RYAN POWELL,	)
	) Jury Trial, Vol. 8
Defendant.	)
	)

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE RICHARD A. JONES  
UNITED STATES DISTRICT JUDGE

---

APPEARANCES:

For the Plaintiff: CATHERINE L. CRISHAM  
AMY JAQUETTE  
Assistant United States Attorneys  
700 Stewart Street, Suite 5220  
Seattle, WA 98101

For the Defendant: ALLEN R. BENTLEY  
Attorney at Law  
111 Third Avenue, Suite 2220  
Seattle, WA 98101

JESSE FROEHLING  
Froehling Law Office  
122 East Stewart Avenue  
Puyallup, WA 98372

Reported by: NANCY L. BAUER, CCR, RPR  
Federal Court Reporter  
700 Stewart Street, Suite 17205  
Seattle, WA 98101  
(206) 370-8506  
nancy\_bauer@wawd.uscourts.gov

1 June 24, 2016

11: 40 a. m.

## 2 PROCEEDINGS

3 THE FOLLOWING PROCEEDINGS WERE HELD  
4 OUTSIDE THE PRESENCE OF THE JURY:5 THE COURT: We are back on the record. All parties  
6 are present.7 I have a question from the jury. It reads as follows:  
8 "Clarification on Count 4. Does the court include all dates  
9 of travel, or is it limited to June 4, 2014, as stated by the  
10 prosecution in closing arguments?" It's signed by the  
11 foreperson.

12 So let me hear from counsel for the government first.

13 MS. CRISHAM: Thank you, Your Honor.

14 After receiving the question from the jury, we reviewed  
15 the jury instructions again, specifically Instruction No. 25,  
16 and saw that, indeed, it does not include the date that was  
17 charged in the superseding indictment.18 And so I think that it would be appropriate, and hopefully  
19 it would clarify this for the jury, to amend the last line of  
20 that instruction so the sentence began, "On or about June  
21 4th, 2015, the defendant knowingly persuaded, induced,  
22 enticed, or coerced B. M. to travel in interstate commerce to  
23 engage in prostitution."

24 MS. JAQUETTE: That should be 2014, though.

25 MS. CRISHAM: I'm sorry. Yes. 2014. Thank you.

1 And then, Your Honor, 26 is the attempt instruction.

2 THE COURT: Yes.

3 MS. CRISHAM: So then we would propose the following  
4 amendment under the first element:

5 "First, that on or about June 4th, 2014," and then  
6 continue as it is already stated, "the defendant knowingly  
7 attempted to persuade, induce, entice, or coerce B. M. to  
8 travel in interstate commerce to engage in prostitution."

9 THE COURT: All right.

10 Counsel for the defense?

11 MR. BENTLEY: First of all, as a point of  
12 clarification, Your Honor, as I read this note, on line 17,  
13 I --

14 THE COURT: Which instruction, counsel?

15 MR. BENTLEY: The note. I'm looking at the jury's  
16 note.

17 THE COURT: Okay.

18 MR. BENTLEY: As the court read it, it was "does the  
19 court include all dates of travel?" When I look at that word  
20 "court," it looks like "the count" in the first sentence of  
21 this note.

22 THE COURT: Yes. Clarification on Count 4.

23 MR. BENTLEY: I think they're asking completely for  
24 clarification on that count.

25 THE COURT: Yes.

1                   MR. BENTLEY: I would ask the court to simply read  
2 Count 4 to the jury as it is stated in the indictment, with  
3 the exclusion of the material that was stricken by consent,  
4 the last portion of Count 4, which says, "and any sexual  
5 activity for which any person can be charged with a criminal  
6 offense."

7                   As the court may recall, we had moved to strike that. The  
8 government agreed.

9                   So Count 4 would read, "On or about June 4, 2014" --

10                  THE COURT: Counsel, what are you referring to?  
11 Which instruction?

12                  MR. BENTLEY: I wasn't referring to an instruction,  
13 Your Honor. I was referring to the superseding indictment.

14                  THE COURT: Okay.

15                  I have that before me now, counsel, and I have Count 4 in  
16 front of me. So, now?

17                  MR. BENTLEY: My proposal is that rather than trying  
18 to edit or modify the court's instructions, the court simply  
19 read to the jury the following.

20                  Count 4 of the indictment reads as follows: "On or about  
21 June 4, 2014, in King County, within the Western District of  
22 Washington and elsewhere, Robert Ryan Powell did knowingly  
23 persuade, induce, entice, and coerce, and did attempt to  
24 persuade, induce, entice, and coerce an adult female, B. M.,  
25 to travel in interstate commerce, specifically from the state

1 of Washington to the state of Nevada, to engage in  
2 prostitution."

3 THE COURT: All right.

4 Government's response?

5 MS. CRISHAM: Your Honor, we would object to that  
6 because I think that by adding the reference to the  
7 jurisdiction and the locations where the travel occurred, I  
8 think this adds additional elements for the jury to find,  
9 which are not necessary for them to find.

10 To find the defendant guilty, they simply need to find  
11 that on or about a particular date, he knowingly persuaded,  
12 induced, enticed, or coerced B.M. to travel in interstate  
13 commerce to engage in prostitution.

14 It's not necessary that that happened in King County, or  
15 even that he traveled from the state of Washington to the  
16 state of Nevada.

17 THE COURT: Hearing from both parties, it doesn't  
18 appear that the defendant is necessarily opposed to the  
19 government's proposal, counsel's suggestion of a modification  
20 to read the specifics of the count.

21 I think the objective is accomplished and specifically  
22 answers the question, because they're really looking for the  
23 date, and I think the date is a critical component of what's  
24 not present before the jury.

25 Because their specific question is, "Clarification on

1 Count 4. Does the count include all dates of travel, or is  
2 it limited to June 4, 2014, as stated by the prosecution in  
3 closing argument?"

4 So my read of that is, they're looking at two options. Is  
5 it all dates of travel, or is it June 4th, 2014?

6 The defendant is charged with specific activity, of having  
7 committed the violation on June 4. Because here's the  
8 problem that the court has if we leave them with an  
9 impression of all dates, and that is, we wouldn't know if  
10 they came back with a verdict on one period of travel as  
11 opposed to another period of travel.

12 So I think by clarifying and telling them the exact date  
13 as referenced in the indictment, there shouldn't be any  
14 prejudice to the defendant.

15 Would you agree, counsel?

16 MR. BENTLEY: I would agree, but, again, I don't  
17 agree with revising the instructions. I don't think it would  
18 be inappropriate -- I think it would be proper for the court  
19 to answer this question by saying, "The date in Count 4 is  
20 June 4, 2014."

21 THE COURT: Any objection to that by counsel for the  
22 government?

23 MS. CRISHAM: No objection to that, Your Honor.

24 THE COURT: Okay. I think that accomplishes the  
25 objective, counsel.

1 I will have the response read, "The date in Count 4 is  
2 June 4, 2014."

3 Counsel, would you like to inspect it before it goes back  
4 to the jury room?

5 MR. BENTLEY: Your Honor, I need to inspect that.

6 I have inspected it, and I have no objection.

7 I simply, while we're all here, I note Mr. Froehling has  
8 not been able to get back to court. I waive his presence, if  
9 that's appropriate.

10 I also wanted to alert the court to the fact that  
11 Mr. Froehling has informed me that he is scheduled to travel  
12 to Phoenix on Monday and would not be here.

13 I doubt that we'll be here on Monday, either. But if the  
14 jury deliberations continue to Monday, we cannot expect  
15 Mr. Froehling here, if the court would agree to his absence.

16 THE COURT: All right. Then let me ask you this  
17 question, the same question I asked the jurors in hardship  
18 questions.

19 What happens if you become gravely ill and you are not  
20 able to participate in the proceedings on Monday, in the  
21 event that we were to go forward on Monday?

22 MR. BENTLEY: Then we have a problem, and we'll need  
23 Mr. Froehling here.

24 THE COURT: All right.

25 MR. BENTLEY: My understanding is, Your Honor, that

1 HONORABLE RICHARD A. JONES  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 ROBERT RYAN POWELL,

13 Defendant.

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15 CASE NO. CR15-244RAJ

COURT'S INSTRUCTIONS TO  
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THE JURY

Given in open court this 23rd day of June, 2016.

  
The Honorable Richard A. Jones  
United States District Judge

## INSTRUCTION NO. 1

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

## INSTRUCTION NO. 2

This is a criminal case brought by the United States government. The government charges the Defendant, Robert Ryan Powell, with:

- Two counts of Transportation of a Juvenile with the Intent to Engage in Prostitution (Counts One and Two);
  - One count of Sex Trafficking by Force, Fraud or Coercion (Count Three); and
  - One count of Transportation of a Person for the Purpose of Prostitution through Coercion and Enticement (Count Four).

The charges against the Defendant are contained in the Superseding Indictment. The Superseding Indictment simply describes the charges the government brings against the Defendant. The Superseding Indictment is not evidence and does not prove anything.

The Defendant has pleaded not guilty to the charges and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the Defendant has the right to remain silent and never has to prove innocence or to present any evidence.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes which the government must prove to make its case:

In order for the Defendant to be found guilty of the crime of Transportation of a Juvenile with the Intent to Engage in Prostitution (Counts One and Two), the government must prove beyond a reasonable doubt (1) that the Defendant transported the juvenile from Washington State to California; (2) that the Defendant did so with the intent that the juvenile engage in prostitution; and (3) that the juvenile was under the age of 18 years at the time.

1        In order for the Defendant to be found guilty of the crime of Sex Trafficking  
2 by Force, Fraud or Coercion (Count Three), the government must prove beyond a  
3 reasonable doubt (1) that the Defendant knowingly did recruit, entice, harbor,  
4 transport, provide, or obtain another person; (2) that the Defendant did so knowing  
5 that means of force, fraud, coercion, or any combination of such means, would be  
6 used to cause that person to engage in a commercial sex act; and (3) that the  
7 Defendant's actions were in or affecting interstate commerce.

8        In order for the Defendant to be found guilty of the crime of Transportation  
9 of a Person for the Purpose of Prostitution through Coercion and Enticement  
10 (Count Four), the government must prove beyond a reasonable doubt that the  
11 Defendant knowingly persuaded, induced, enticed, or coerced a person to travel in  
12 interstate commerce to engage in prostitution.

13        In order for the Defendant to be found guilty of the crime of Attempted  
14 Transportation of a Person for the purpose of prostitution through coercion and  
15 enticement (Count Four), the government must prove beyond a reasonable doubt  
16 (1) that the Defendant knowingly attempted to persuade, induce, entice, or coerce a  
17 person to travel in interstate commerce to engage in prostitution; and (2) that the  
18 Defendant did something that was a substantial step toward persuading, inducing,  
19 enticing, or coercing that person to travel in interstate commerce to engage in  
20 prostitution.

## INSTRUCTION NO. 3

A separate crime is charged against the Defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

## INSTRUCTION NO. 4

The Superseding Indictment is not evidence. The Defendant has pleaded not guilty to the charges. The Defendant is presumed to be innocent unless and until the government proves the Defendant guilty beyond a reasonable doubt. In addition, the Defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

## INSTRUCTION NO. 5

The parties have agreed to certain facts by way of stipulations. You should therefore treat those facts as having been proved.

## INSTRUCTION NO. 6

The evidence you are to consider in deciding what the facts are consists of:

- (1) The sworn testimony of any witness;
  - (2) The exhibits received in evidence; and
  - (3) Any facts to which the parties have agreed.

## INSTRUCTION NO. 7

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements and will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

## INSTRUCTION NO. 8

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

## INSTRUCTION NO. 9

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

(1) The witness's opportunity and ability to see or hear or know the things testified to;

## (2) The witness's memory:

(3) The witness's manner while testifying:

(4) The witness's interest in the outcome of the case, if any;

(5) The witness's bias or prejudice, if any:

(6) Whether other evidence contradicted the witness's testimony.

(7) The reasonableness of the witness's testimony in light of all the

evidence; and

(8) Any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

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You are here only to determine whether the Defendant is guilty or not guilty of the charges in the Superseding Indictment. The Defendant is not on trial for any conduct or offense not charged in the Superseding Indictment.

JURY INSTRUCTIONS - 12

1                   INSTRUCTION NO. 11  
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28 A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the Defendant did not testify.

## INSTRUCTION NO. 12

You have heard testimony that the Defendant made a statement. It is for you to decide (1) whether the Defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the Defendant may have made it.

1                   INSTRUCTION NO. 13  
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You have heard evidence that the Defendant committed other crimes, wrongs, or acts not charged here. You may consider this evidence only for its bearing, if any, on the question of the Defendant's intent, motive, opportunity, preparation, plan, knowledge, identity, absence of mistake, absence of accident, and for no other purpose. You may not consider this evidence as evidence of guilt of the crime for which the Defendant is now on trial.

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1                   INSTRUCTION NO. 14  
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2                   You have heard evidence that the Defendant was convicted of other crimes  
3                   not charged here. You may consider this evidence only for its bearing, if any, on  
4                   the question of the Defendant's intent, motive, opportunity, preparation and plan,  
5                   and for no other purpose. You may not consider this evidence as evidence of guilt  
6                   of the crime for which the Defendant is now on trial.

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## INSTRUCTION NO. 15

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

## INSTRUCTION NO. 16

During the trial, certain charts and summaries were shown to you in order to help explain the evidence in the case. If these charts and summaries were not admitted in evidence, then they will not go into the jury room with you. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

## INSTRUCTION NO. 17

Certain charts and summaries have been admitted in evidence. Any charts or summaries that are admitted are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

1                   **INSTRUCTION NO. 18**  
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Proof beyond a reasonable doubt is proof that leaves you firmly convinced the Defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the Defendant is guilty, it is your duty to find the Defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the Defendant is guilty, it is your duty to find the Defendant guilty.

## INSTRUCTION NO. 19

Defendant Robert Ryan Powell is charged in Count One of the Superseding Indictment with Transportation of a Juvenile with Intent to Engage in Prostitution, in violation of Section 2423(a) of Title 18 of the United States Code. In order for the Defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant transported C.C. from Washington State to California;

Second, that the Defendant did so with the intent that C.C. engage in prostitution; and

Third, that C.C. was under the age of 18 years at the time.

The government does not need to prove that the Defendant knew that C.C. was, in fact, under the age of 18 years at the time that C.C. was transported.

## INSTRUCTION NO. 20

Defendant Robert Ryan Powell is charged in Count Two of the Superseding Indictment with Transportation of a Juvenile with Intent to Engage in Prostitution, in violation of Section 2423(a) of Title 18 of the United States Code. In order for the Defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant transported N.C. from Washington State to California;

Second, that the Defendant did so with the intent that N.C. engage in prostitution; and

Third, that N.C. was under the age of 18 years at the time.

The government does not need to prove that the Defendant knew that N.C. was, in fact, under the age of 18 years at the time that N.C. was transported.

## INSTRUCTION NO. 21

Defendant Robert Ryan Powell is charged in Count Three of the Superseding Indictment with Sex Trafficking of a Person or By Force, Fraud and Coercion, in violation of Section 1591(a)(1) and (b)(1) of Title 18 of the United States Code. In order for the Defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant knowingly recruited, enticed, harbored, transported, provided, or obtained B.M.;

Second, that the Defendant did so knowing that means of force, fraud, coercion, or any combination of such means, would be used to cause B.M. to engage in a commercial sex act; and

Third, that the Defendant's actions were in or affecting interstate commerce.

## INSTRUCTION NO. 22

“Recruit” means to seek the services of or to enroll a person in support of oneself or others. To “entice” means to attract or lure using hope or desire. To “harbor” a person means to give or afford shelter or refuge to that person. To “transport” means to transfer or convey from one place to another. To “provide” means to supply or make available. To “obtain” means to gain, acquire, or attain.

## INSTRUCTION NO. 23

The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

## INSTRUCTION NO. 24

The term “Force” means any form of power, violence, compulsion or physical pressure exercised upon another person in any degree.

The term “Fraud” means a deception deliberately practiced in order to secure unfair or unlawful gain.

The term “coercion” means (1) threats of serious harm to or physical restraint against any person; (2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (3) the abuse or threatened abuse of law or the legal process.

The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm that is sufficiently serious under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

To prove sex trafficking, the government does not need to link each of the threats allegedly made or actions allegedly taken against a person to particular commercial sex acts performed by her.

Also, the fact that a person may have initially acquiesced or agreed to provide services for a defendant does not preclude a finding that the person was later compelled to engage in commercial sex acts.

## INSTRUCTION NO. 25

Defendant Robert Ryan Powell is charged in Count Four of the Superseding Indictment with Transportation of an Individual for the Purpose of Prostitution through Coercion and Enticement in violation of Section 2422(a) of Title 18 of the United States Code. In order for the Defendant to be found guilty of that charge, the government must prove beyond a reasonable doubt:

That the Defendant knowingly persuaded, induced, enticed, or coerced B.M. to travel in interstate commerce to engage in prostitution.

## INSTRUCTION NO. 26

Defendant Robert Ryan Powell is also charged in Count Four of the Superseding Indictment with attempting to commit the crime of Transportation of an Individual for the Purpose of Prostitution through Coercion and Enticement in violation of Section 2422 of Title 18 of the United States Code. In order for the Defendant to be found guilty of that charge, the government must prove beyond a reasonable doubt:

First, the Defendant knowingly attempted to persuade, induce, entice, or coerce B.M. to travel in interstate commerce to engage in prostitution; and

Second, the Defendant did something that was a substantial step toward persuading, inducing, enticing, or coercing B.M. to travel in interstate commerce to engage in prostitution.

Mere preparation is not a substantial step toward committing the crime. To constitute a substantial step, a defendant's act or actions must demonstrate that the crime will take place unless interrupted by independent circumstances.

## INSTRUCTION NO. 27

An act is done knowingly if the Defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the Defendant knew that his acts or omissions were unlawful. You may consider evidence of the Defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the Defendant acted knowingly.

1                   INSTRUCTION NO. 28  
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The terms "persuade," "induce," and "entice" have their ordinary meaning. An act or transaction that crosses state lines is "in" interstate commerce. An act or transaction that is economic in nature and affects the flow of money in the stream of commerce "affects" interstate commerce. In determining whether an act, transaction, or movement of an article or commodity was "in" or "affecting" interstate commerce, you may consider evidence of the use of instrumentalities of interstate commerce, such as cellular telephones and the internet, as well as articles or commodities that moved between states or affected interstate commerce.

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## INSTRUCTION NO. 29

Consent is not a defense to transportation of a minor for purpose of prostitution.

1                   INSTRUCTION NO. 30  
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You have heard testimony that Brittany Miller, a witness, resigned from a position as a salesperson with Radio Shack after Radio Shack opened an investigation into her theft of merchandise and she admitted that she had stolen iPhones and other devices from Radio Shack. You may consider this evidence in deciding whether or not to believe this witness and how much weight to give to the testimony of this witness.

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1                   INSTRUCTION NO. 31  
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You have heard testimony from an undercover agent who was involved in the government's investigation in this case. Law enforcement officials may engage in stealth and deception, such as the use of informants and undercover agents, in order to investigate criminal activities. Undercover agents and informants may use false names and appearances and assume the roles of members in criminal organizations.

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## INSTRUCTION NO. 32

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

1                   **INSTRUCTION NO. 33**  
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Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

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7                   Do not communicate with anyone in any way and do not let anyone else  
8                   communicate with you in any way about the merits of the case or anything  
9                   to do with it. This includes discussing the case in person, in writing, by  
10                  phone or electronic means, via email, text messaging, or any Internet chat  
11                  room, blog, website or other feature. This applies to communicating with  
12                  your family members, your employer, the media or press, and the people  
13                  involved in the trial. If you are asked or approached in any way about your  
14                  jury service or anything about this case, you must respond that you have  
15                  been ordered not to discuss the matter and to report the contact to the court.

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17                  Do not read, watch, or listen to any news or media accounts or commentary  
18                  about the case or anything to do with it; do not do any research, such as  
19                  consulting dictionaries, searching the Internet or using other reference  
20                  materials; and do not make any investigation or in any other way try to learn  
21                  about the case on your own.

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23                  The law requires these restrictions to ensure the parties have a fair trial based  
24                  on the same evidence that each party has had an opportunity to address. A juror  
25                  who violates these restrictions jeopardizes the fairness of these proceedings, and a  
26                  mistrial could result that would require the entire trial process to start over. If any  
27                  juror is exposed to any outside information, please notify the court immediately.

1                   **INSTRUCTION NO. 34**  
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Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

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**70a**1                   INSTRUCTION NO. 35  
23                   The punishment provided by law for this crime is for the Court to decide.  
45                   You may not consider punishment in deciding whether the government has proved  
6                   its case against the Defendant beyond a reasonable doubt.  
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## INSTRUCTION NO. 36

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

## INSTRUCTION NO. 37

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the Defendant, until after you have reached a unanimous verdict or have been discharged.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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UNITED STATES OF AMERICA, )  
Plaintiff, ) CASE NO. CR15-00244RAJ  
)  
v. ) SEATTLE, WASHINGTON  
) June 22, 2016  
ROBERT RYAN POWELL, )  
Defendant. ) Jury Trial, Vol. 6  
)  
)

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE RICHARD A. JONES  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiff: CATHERINE L. CRISHAM  
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Federal Court Reporter  
700 Stewart Street, Suite 17205  
Seattle, WA 98101  
(206) 370-8506  
nancy\_bauer@wawd.uscourts.gov

1 THE FOLLOWING PROCEEDINGS WERE HELD  
2 OUTSIDE THE PRESENCE OF THE JURY:

3 THE COURT: Mr. Bentley, counsel for the government  
4 has represented to the court that they have inspected the  
5 exhibit list to match their understanding of what exhibits  
6 have been admitted at this point in time.

7 The court is going to bring the jury back in at this point  
8 in time, but you indicated there was some motions or issues  
9 that you wanted to bring to the court's attention before you  
10 start your case?

11 MR. BENTLEY: Yes, there are.

12 After the government rests, I would like the opportunity  
13 to argue motions under Rule 29.

14 THE COURT: Okay. Is there any reason why we can't  
15 do that now while the jury is outside the courtroom?

16 MR. BENTLEY: No reason, Your Honor.

17 THE COURT: Okay. Let's take them up now.

18 So we're operating under the assumption that the  
19 government will rest as soon as the jury comes back in,  
20 correct?

21 MS. CRISHAM: Yes.

22 THE COURT: Okay.

23 MR. BENTLEY: Your Honor, I'm moving for a judgment  
24 of acquittal on the grounds that the evidence is insufficient  
25 as to each of the counts.

1 Let me begin by addressing the first two counts involving  
2 CC and NC.

3 I submit that the testimony of these witnesses has been  
4 contradictory and is inadequately corroborated by other  
5 evidence.

6 There was testimony that they posted on Backpage while at  
7 the Studio 6 Motel in Mountlake Terrace. We've had no  
8 evidence of those Backpage postings.

9 There was testimony that they registered at the San Jose  
10 Airport Hotel. There's been no registration document as to  
11 that.

12 There's no testimony by a customer, as there was in South  
13 Dakota, about the acts of prostitution and payment for sex  
14 either by a customer at the Studio 6 Motel or by a customer  
15 on the track in San Jose.

16 There's been no testimony by an undercover officer either  
17 in Mountlake Terrace or in San Jose.

18 Everything rests on the testimony of NC and CC.

19 Yes, they stayed at a Studio 6 Motel. Yes, they went to  
20 California. But they have a motive to minimize involvement,  
21 if there was involvement.

22 They were angry at Mr. Powell. They claim -- CC claims  
23 that her shoes hurt, but they were her shoes that she chose  
24 to bring with her, and, in fact, she wanted them back.

25 NC testified that they posted in San Jose. CC testified

1 they di dn' t post i n San Jose.

2 So i n light of those ci rcumstances, I submit that the  
3 court shoul d enter a judgment of not guilty on the grounds  
4 that the evi dence on Counts 1 and 2 i s i nsufficient to perm i t  
5 a reasonabl e juror to concl ude that the charges have been  
6 establ i shed beyond a reasonabl e doubt.

7 Now, turni ng to Counts 3 and 4, the argument I have on  
8 Count 3, Your Honor, i s the same argument that I rai sed i n a  
9 pretrial motion fi led i n Document No. 64, as expl ai ned and  
10 argued i n Document No. 65.

11 Namel y, the government has sought to join three separate  
12 traffi cki ng i nci dents -- traffi cki ng peri ods i n one charge.  
13 That i s i mproper. It deni es Mr. Powel l the opportuni ty to  
14 know exactly what he i s bei ng charged wi th, and i t may  
15 deprive him of the opportuni ty for a unani mous verdict  
16 because some jurors may feel that he was guilty of the fi rst  
17 peri od, some may conclude the second, some may conclude the  
18 thi rd.

19 I i llustrate this by a very rough schematic di agram. I  
20 apol ogi ze for the quality. This i s, i n effect, a timeline of  
21 the 13-month period that's charged i n the i ndictment.

22 And as the court wi ll recall, Ms. M █████ first went to Las  
23 Vegas on February 27th, 2014. She was there onl y bri efl y.  
24 She had an encounter wi th Mr. Powel l that was unsatisfactory.  
25 She went to Harrah's. She called her mother. She went to

1 jail. Her mother bought her a ticket, and on March 3rd she  
2 flew back to Washington.

3 The next time she saw Mr. Powell was April 29th of 2014.  
4 And significantly, between her return to Washington on March  
5 3rd and her departure for Las Vegas on April 29th, she was  
6 not only was posting on Backpage daily, but she had one other  
7 pimp, or maybe two, in succession.

8 And as the government's expert, Mr. Stigerts, testified,  
9 the pimp/prostitution relationship is an exclusive one as far  
10 as the prostitute related to the pimp. A prostitute cannot  
11 have more than one pimp.

12 And so I say -- and the prostitution chooses up. So  
13 Ms. M [REDACTED] chose up with Mr. Powell, by her testimony, in  
14 late February. She returned to Washington in March, and she  
15 chose up with another pimp.

16 Then on April 29th she goes back to Vegas, and she is with  
17 Mr. Powell from April 29th until August 22nd or thereabouts.

18 At that point, she leaves him, goes back to be with her  
19 mother. She gets a job at Starbucks. Mr. Powell is  
20 incarcerated and, for all the record shows, he was  
21 incarcerated continuously until sometime in October and  
22 later. According to his mom, he came back from California.  
23 As I recall, it was late October.

24 So, again -- and I believe her testimony -- Ms. M [REDACTED]'s  
25 testimony was that she chose up with another pimp during this

1 September, October, November period.

2 So then she goes back to Las Vegas on November 15th, and  
3 she's with Mr. Powell continuously until January 13th, when  
4 he is arrested in Rapid City.

5 And so the shaded areas on this sketch reflect the times  
6 that she was with Mr. Powell.

7 And it's my position that, yes, trafficking is a  
8 continuous offense, and certainly it's not something that has  
9 to be broken down day by day. And yes, Mr. Powell could be  
10 charged with three counts, one covering each of these three  
11 shaded periods when Ms. M [REDACTED] was with him.

12 But to put them all together violates the rules against  
13 duplicity, and, I submit, requires that the indictment be  
14 dismissed. That's my first point on this.

15 My second point is the indictment itself charges that  
16 Mr. Powell continuously trafficked Ms. M [REDACTED] during this  
17 13-month period.

18 The evidence is quite clear that there were very  
19 significant breaks during that period when she was not being  
20 trafficked by Mr. Powell. So on that basis as well, I submit  
21 that the court should render a verdict at this time and take  
22 the issue away from the jury and find Mr. Powell not guilty.

23 In addition to that, I rely on all the arguments  
24 previously submitted to the court in my pretrial motion to  
25 dismiss Count 3. I understand the court denied that motion;

1 however, at this time the court has a clearer picture of what  
2 went on.

3 I will say that I think many of the factual arguments that  
4 I submitted in pretrial have been borne out, but one never  
5 knows how the evidence is going to come in.

6 But at this time they have not established a 13-month  
7 period of continuous trafficking, as alleged in the  
8 indictment.

9 Now, had they charged this as "attempted," perhaps they  
10 could have made that case. They charged attempt on Count 4,  
11 that Mr. Powell either enticed, persuaded, induced Ms. M [REDACTED]  
12 to travel from Seattle to Las Vegas, or he attempted to do  
13 so. Count 3 does not contain the attempt diversion, and for  
14 that reason as well I submit that Count 3 should be dismissed  
15 at this time.

16 Now, turning to Count 4, the indictment says that  
17 Mr. Powell enticed Ms. M [REDACTED] to travel from Seattle to Las  
18 Vegas.

19 When I read that, among other verbs, but let me say that  
20 the implication of enticing is luring someone, convincing  
21 someone that they should join you or that they should travel  
22 from Point A to Point B to be with you.

23 In this case, the evidence shows that Mr. Powell was in  
24 Seattle, Ms. M [REDACTED] was in Seattle when this enticing and  
25 persuading occurred, and the two of them traveled together on

1 a flight from Seattle to Las Vegas. I submit that is not  
2 what the statute has in mind.

3 Furthermore, the airline reservations were made by the  
4 b [REDACTED] email address, and B [REDACTED] M [REDACTED]'s address  
5 was given to the airline, very much like the February 15th  
6 incident when she independently chose to come back to Seattle  
7 from Boise because she had changed her mind about going to  
8 see Mr. Powell.

9 And so for those reasons, I submit the evidence on Count 4  
10 is insufficient. The court should enter a verdict of not  
11 guilty.

12 I would also renew my motion to sever Counts 1 and 2 from  
13 Counts 3 and 4 on the ground there is inadequate connection  
14 between those counts.

15 THE COURT: Thank you, counsel.

16 Counsel for the government?

17 MS. CRISHAM: Thank you, Your Honor.

18 Your Honor, we would disagree with Mr. Bentley. The  
19 government has proven the elements of all four crimes charged  
20 beyond a reasonable doubt.

21 Starting first with Counts 1 and 2, which are the  
22 transportation charges. Your Honor, the evidence establishes  
23 all three elements of that crime.

24 First, the defendant transported C [REDACTED] C [REDACTED] and N [REDACTED]  
25 C [REDACTED] from Washington to California. We know that because

1 we know he rented a room for them at the Studio 6 Motel. We  
2 know that he drove his BMW, which was at the Studio 6, to a  
3 hotel in California, where hotel records showed that he  
4 rented a room at the Hotel Elan.

5 He was also arrested, the day after he left the juveniles,  
6 30 miles away from the Hotel Elan.

7 We also know that he transported both juveniles with the  
8 attempt that they engage in prostitution. We know that  
9 because of how he met them, how he found them.

10 He found C [REDACTED] C [REDACTED] on backpage.com, which is a  
11 website that is used to advertise prostitution. He had  
12 sought her out on tagged.com, he made a friend request, and  
13 he hunted her down on Aurora Avenue. He targeted her not  
14 because he thought she was going to be a great friend. He  
15 targeted her because he knew she was a prostitute and because  
16 he wanted her to work for him.

17 And he convinced her to bring her friend, N [REDACTED] C [REDACTED]  
18 [sic], who also posted on Backpage along with her. The  
19 defendant spoke with both juveniles about making money in  
20 California. Both juveniles said that they understood what  
21 that would mean. They would work as prostitutes.

22 C [REDACTED] C [REDACTED] said that during the car ride the defendant  
23 recruited her, told her that he wanted her to choose up with  
24 him; that he and his former prostitute, B [REDACTED] M [REDACTED], had  
25 traveled everywhere and made a lot of money, and that he and

1 C [REDACTED] could do the same thing.

2 And then within hours of arriving in California, letting  
3 the girls play in the pool for about an hour, defendant told  
4 them it was time to get to work. He drove them to the track.  
5 He would not let them leave until he said it was time to  
6 leave. He took their prostitution earnings, and then he left  
7 them when he thought they weren't making enough money.

8 He took them to California with the intent that they  
9 engage in prostitution, and that is, in fact, what they did.

10 And finally, there is no dispute that both C [REDACTED] and  
11 N [REDACTED] were under the age of 18 when the defendant brought  
12 them.

13 Mr. Bentley talks about there being no testimony from  
14 customers or undercover officers. That's not an element of  
15 the crime. We're not required to show that.

16 He talks about inconsistencies between the juvenile  
17 statements, and I think that those were all explained by them  
18 as wanting to downplay their involvement in prostitution to  
19 law enforcement for fear of getting in trouble, for fear of  
20 being judged, for embarrassment.

21 And to the extent there's inconsistencies, they are not on  
22 things that matter.

23 We know that C [REDACTED] C [REDACTED] -- there was a Backpage ad  
24 featuring her posted the day before they were at Studio 6.  
25 She testified under oath that she had two dates; one of them

1 was a regular client that she knew before, and that one of  
2 them was someone that called her from Backpage. And she also  
3 testified that she had received -- she had had customers call  
4 her from Backpage ads that she had posted days before in the  
5 past.

6 C [REDACTED] C [REDACTED] said she posted on Backpage. No Backpage  
7 ads were recovered, and the testimony was that she did not  
8 remember what name she posted under and she doesn't remember  
9 what phone number she posted under. And there's simply no  
10 reliable way of obtaining, from Backpage, ads without that  
11 information. So I think the government clearly has  
12 established all of the elements of Counts One and Two.

13 With regards to Count 3, I'd like to address Mr. Bentley's  
14 legal argument, and, again, rely upon the argument the  
15 government made in its response to his motion to dismiss on  
16 duplicitous grounds.

17 1591 is a continuous course of conduct -- criminalizes the  
18 continuous course of conduct, and that is exactly what the  
19 evidence shows the defendant did.

20 One of the means -- the many means of violating 1591 is  
21 recruiting.

22 And it's clear that during the times the defendant was not  
23 physically with B [REDACTED] M [REDACTED], harboring her and  
24 transporting her, inducing her to engage in prostitution, he  
25 was recruiting her to do so.

1       He began recruiting her in January. He finally convinced  
2 her to come join him in Las Vegas, after which he slapped  
3 her. She then returned back to Seattle. And the testimony  
4 from B██████████ was that he called her almost every day, trying  
5 to get her to come back and work for him. That is  
6 recruitment. That violates 1591. The defendant did it, and  
7 he did it continuously. He did that from March until  
8 April 29th.

9       The fact that B██████████ testified that she worked as a  
10 prostitution on her own and that she worked briefly -- and  
11 she said for a week -- for one other pimp does not break the  
12 defendant's type of conduct.

13       1591 is not concerned about the victims' actions. It is  
14 concerned about the defendant's actions. And the evidence  
15 makes clear that the defendant continued, uninterrupted, his  
16 recruitment of B██████████ M█████████ until she returned in April.

17       It even continued after she became pregnant in August and  
18 she went home briefly with her mother.

19       Again, B██████████'s testimony is that even after she was  
20 separated from defendant, he was continually calling her and  
21 talking to her.

22       He was in jail -- this is not in the record, but he was in  
23 jail and he was at a halfway house. This is evidence that  
24 was not admitted at the request of the defense. But we know  
25 from the evidence that it's possible for Mr. Powell to talk

1 to people when he's in jail. B [REDACTED] said he was  
2 continually talking to her, even in October, which is when  
3 she left.

4 Mr. Powell's conduct did not abate. He continued to  
5 recruit B [REDACTED], and he was finally successful in November  
6 when she returned to him and when she stayed with him until  
7 January when the defendant was arrested.

8 And as we briefed in our responses to the defense's  
9 pretrial motion, 1591 is a continuous offense for many  
10 reasons, including because it is a charge -- or a crime where  
11 there's harm in years. And the defendant's past actions  
12 aggregated and built upon themselves, and they helped cause  
13 B [REDACTED] to compel her and force her to engage in  
14 prostitution.

15 She testified over and over again that there were times  
16 when she did not want to go out and prostitute, but she did  
17 because she was afraid of being hurt, because she had the  
18 memory of that first slap by the defendant on February 27th  
19 of 2014. That slap affected her and caused her to do  
20 prostitution all the way until the defendant's arrest on  
21 January 13th, 2015.

22 And all the defendant's other violent actions: The  
23 kicking, the throwing of objects, the screaming, the yelling  
24 at her, the sexual violations, the stomping on her legs,  
25 those all caused B [REDACTED] to engage in sex acts through the

1 defendant's actions.

2 Again, the defense claims that we should have charged  
3 attempt. Recruiting is one of the means of committing this  
4 crime. And from January 2013 to January 13th of 2014, the  
5 defendant was continually engaging in at least one and  
6 sometimes more of the means listed in 1591. He was  
7 recruiting, he was transporting, he was harboring, he was  
8 enticing.

9 And B█████████████████████ M█████████████████████'s testimony is corroborated by the  
10 evidence that we heard this morning from Detective  
11 Washington. The myriad Backpage ads, the hotel records, the  
12 travel records that show that she was with the defendant  
13 during the time in question.

14 Finally, with regards to Count 4, the defense focuses on  
15 just one of the words in Count 4, "entice." In fact, it says  
16 the defendant from persuading, inducing, or enticing someone  
17 to travel across state lines for the purpose of prostitution.

18 And "persuaded" and "entice" have the ordinary dictionary  
19 meaning. And, Your Honor, that is exactly what the defendant  
20 was doing, and that is what B█████████████████████ M█████████████████████ testified to;  
21 that the defendant told her that he wanted to go back to Las  
22 Vegas. And she testified that the defendant told her where  
23 to go. She did not make the decisions. Every time they  
24 traveled, it was the defendant at the wheel, the defendant  
25 telling her what to do. She had no input in it.

1 There are airline records showing that the defendant  
2 accompanied B [REDACTED] from Seattle to Las Vegas, and there is  
3 evidence that once in Las Vegas, B [REDACTED] began engaging in  
4 prostitution. There are Backpage ads from that time frame,  
5 numerous ads that were introduced today.

6 As far as the defense's argument that the B [REDACTED] M [REDACTED]  
7 email address somehow proved that that flight was not for the  
8 purpose of prostitution, I think it's very clearly shown to  
9 not be true, given that the b [REDACTED] email address was  
10 used to post numerous Backpage ads soon after she arrived in  
11 Vegas, when the defendant took her there.

12 So, Your Honor, we do believe that we've proven beyond a  
13 reasonable doubt all the elements of all four charges, and we  
14 would ask this go to the jury.

15 THE COURT: Thank you.

16 Rebuttal, counsel?

17 MR. BENTLEY: I would just call the court's attention  
18 to some of Ms. M [REDACTED]'s testimony that I flagged at the time.  
19 This would have been part of her redirect examination on  
20 June 20th.

21 The prosecutor asked her, "Do you recall that you were  
22 back in Seattle with the defendant in May?" That would be in  
23 May 2014. She said yes.

24 "Did you travel back to Las Vegas on June 4?" That's  
25 Count 4.

1 Answer: "Yes."

2 "Did the defendant" -- and now I'm a little shaky on this,  
3 but I seem to recall, "Did the defendant ask you to go to Las  
4 Vegas with him, or did he force you to go to Las Vegas?"

5 And my notes indicate her answer was, "He probably did. I  
6 don't remember." "I don't remember."

7 So that is critical to Count 4. I'm submitting to the  
8 court that that is not a sufficient basis for convicting my  
9 client on Count 4.

10 THE COURT: All right. Thank you, counsel.

11 If there's nothing further, the court makes the following  
12 determinations:

13 The government has presented substantial evidence on all  
14 of the counts that have been presented before this court.

15 The court will deny each of the motions made by the defense.

16 Counts 1 and 2 specifically, as raised by the defense, go  
17 more to factual disputes and questions as to how a jury  
18 should treat the evidence as opposed to what showing the  
19 government has presented at this point in time.

20 The issue regarding the fact that they didn't have  
21 testimony from Johns or other people that were customers,  
22 that's not the standard or a fact that the court should  
23 consider at this point in time.

24 The court also looks at the issue regarding Count 3 on the  
25 motion to dismiss, which the defense did raise pretrial, and

1 the court denied that motion. The court now has the benefit  
2 of all the testimony in this case, and it doesn't change the  
3 court's position.

4 The court does note that one of the issues that was raised  
5 by the government in pretrial dealt specifically with the  
6 recruiting component, and the court is satisfied that there's  
7 been ample evidence and the type of evidence for the halftime  
8 motion, and the court should not grant the request to deny  
9 the government's opportunity for the case to go to the jury.

10 As it relates to Count 4, again the court is satisfied  
11 that there was more than substantial evidence and certainly  
12 the type of evidence necessary for this matter to proceed to  
13 the jury, and the court, therefore, denies all of the  
14 defendant's motions at this point in time.

15 Counsel, do you have your witness ready?

16 MR. BENTLEY: We do.

17 THE COURT: Okay. We're going to take our formal  
18 afternoon recess at this time for 15 minutes.

19 This is what the game plan is for the balance of the day:  
20 I'd like to be able to put your witness on, have them  
21 complete what arguments they have or what testimony you'd  
22 like to present. Then we can take formal exceptions, because  
23 I'd like to get the jury instructions resolved, finished, and  
24 actually read to the jury, if possible, depending on how long  
25 the testimony goes.

1 UNI TED STATES DI STRI CT COURT.

2 WESTERN DI STRI CT OF WASHI NGTON AT SEATTLE

3

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4 UNI TED STATES OF AMERI CA, ) CR15-244-RAJ  
5 )  
6 Plaintiff, ) SEATTLE, WASHI NGTON  
7 )  
8 v. ) June 14, 2016  
9 )  
10 ROBERT RYAN POWELL, ) Trial - Day 1  
11 )  
12 Defendant. ) REDACTED

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13  
14 VERBATIM REPORT OF PROCEEDI NGS  
15 BEFORE THE HONORABLE RICHARD A. JONES  
16 UNI TED STATES DI STRI CT JUDGE

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17 APPEARANCES:

18 For the Plaintiff: Catherine Cri sham  
19 Amy Jaquette  
20 Assistant United States Attorneys

21 For the Defendant: Allen Bentl ey  
22 Jesse Froehl i ng  
23 Attorneys at Law

1 Now, in looking at page 3, that's specific areas of cross  
2 examination, counsel for the government did not indicate that  
3 there are any restrictions or limits on their acknowledgement  
4 or concession that that was permissible cross examination.

5 So let me ask counsel for the defense, is that an accurate  
6 reading by the court, that you have no objection to the  
7 proposed cross examination as it appears upon Docket 200,  
8 beginning on page 3, and concluding on page 4? Is that  
9 correct, counsel?

10 MS. JAQUETTE: Yes, Your Honor, it is.

11 THE COURT: All right. Then that motion is granted.  
12 And the defense will be permitted to ask those specific  
13 questions, as proposed on pages 3 and 4 of his motion.

14 The next is a motion for reconsideration. The court will  
15 deny that motion outright at this point in time. The issue  
16 appears to be whether or not there was continuous activity as  
17 it related to the defendant's conduct related to B. M. The  
18 government has proffered to the court that the testimony that  
19 the defendant -- the testimony of the witness will be that  
20 the defendant continued to recruit and entice her from the  
21 time she flew back to Seattle in early March until she  
22 returned to Las Vegas in late April.

23 Now, first of all, motions for reconsideration are  
24 disfavored. Second, the court does not find that there is  
25 any manifest error that was made in the court's

1 determination. Third, the court cannot find, at this time,  
2 that a rational jury could not find that there was continuous  
3 activity, based upon the proffer that's made by the  
4 government.

5 Again, I have no exact idea of the precise testimony of  
6 what B. M. will testify to. It appears that there have been  
7 several revisions of her testimony at this point in time as  
8 far as who was involved, who was not involved, what the  
9 defendant was doing, what the defendant was not doing. At  
10 best, I only have representations from the party. I will not  
11 make a ruling based upon the record now before me that a  
12 motion to dismiss should be granted.

13 I'll deny it at this point in time for several reasons.  
14 One, it's also premature, counsel. We don't know exactly how  
15 those witnesses are going to testify or what she's going to  
16 say.

17 The defense certainly will be entitled to renew that  
18 motion at the conclusion of the government's case. Then the  
19 court will be in a better position to have heard the entirety  
20 of all the testimony being presented to the court. But at  
21 this point in time the court will not grant that request.

22 The court has addressed the motion for reconsideration.  
23 The court has granted a ruling on the opportunity for cross  
24 examination as proposed by the defense. And I believe,  
25 counsel, I've addressed all the motions you've recently

1 Hon. Richard A. Jones  
2  
3  
4  
5  
67 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ROBERT RYAN POWELL,

14 Defendant.

15 No. CR15-244RAJ

16 OMNIBUS ORDER ON  
17 PRETRIAL MOTIONS18 The parties have filed a variety of motions *in limine*. Rather than file  
19 numerous orders ruling on each separate motion, the court files this omnibus order.20 The court, having reviewed the memoranda of law submitted in support of the  
21 respective motions and memoranda in opposition thereto, rules on each of the  
22 motions as follows:23 **Motion to Strike Surplusage from Counts 1, 2 and 4 or Alternatively for a Bill  
24 of Particulars.**25 The government concedes that the challenged language “or sexual activity for  
26 which any person can be charged with a criminal offense” should be stricken from  
Counts 1, 2 and 4 of the Superseding Indictment. This motion is thereby  
GRANTED and the alternative motion for bill of particulars is rendered moot.

1      **Motion to Preclude the Offer of Proof of Prior Convictions and Other Bad Acts.**

2      The defendant seeks to prevent the government from offering ER 404(b)  
3      evidence of two prior convictions, probation violations, and unlawful possession of  
4      drugs and food stamp cards.

5      A trial court may admit evidence of prior similar acts for any non-character  
6      purpose pursuant to Rule 404(b).

7      Each party properly identifies the four-part test enunciated in *United States v.*  
8      *Rendon-Duarte*, 490 F.3d 1142 (9<sup>th</sup> Cir. 2007) that the court must apply before such  
9      evidence is admissible. The court addresses each of the government's proposals  
10     separately.

11     A.     Does the evidence prove a material element of the offense for which  
12     the defendant is now charged?

13     1.     The convictions from California and Nevada do go to prove a  
14     material point, that being, that the defendant intended for C.C., N.C., and B.M. to  
15     engage in acts of prostitution, expecting them to give him their earnings from  
16     prostitution and offer protection in exchange for their acts of prostitution.

17     The evidence further demonstrates the defendant's *modus operandi*.  
18     Specifically, it is the court's understanding that the government's offer of evidence  
19     from these convictions show the defendant's means and operation has been to  
20     arrange for hotels, obtain dates for the women via the internet, and or walking the  
21     streets, and later collecting their earnings.

22     The government's offering includes the similarity of the Nevada conviction  
23     which involved the attempted recruitment of a prostitute online, facilitation of  
24     interstate travel, and arranging for a bus ticket for one of the women. All of these  
25     facts are admissible as they go to show that it was the defendant's intent that the  
26     women involved in the instant charges participated in acts of prostitution.

1           B.     Is the prior conduct too remote in time?

2           Unquestionably no. The two prior events occurred in 2007 and 2008. *United*  
3 *States v. Ross*, 886 F.2d (9<sup>th</sup> Cir. 1989) and *United States v. Johnson*, 132 F.3d 1279  
4 (9<sup>th</sup> Cir. 1997) dispense with any challenge to his issue.

5           C.     Is proof of the prior conduct based upon sufficient evidence?

6           The defense concedes on this point as the defendant was convicted of both  
7 crimes.

8           D.     Is the prior conduct similar to the charged conduct?

9           Each of the noted convictions involved the defendant's recruitment of women  
10 to work for him as prostitutes and taking all of the money they earned from  
11 commercial acts of sex. Evidence of the defendant's business practices in the prior  
12 cases is permitted as it mirrors the facts in the instant matter.

13           For all of the forgoing reasons, the court finds the evidence admissible  
14 because it is relevant to establish the defendant's *modus operandi*, motive, and  
15 intent.

16           E.     Does the probative value of the evidence outweigh the danger of unfair  
17 prejudice?

18           Based upon the defense briefing to date, it appears the obvious defense by the  
19 defendant is whether the women acted voluntarily and whether the defendant had the  
20 requisite intent and knowledge to commit the charged offenses. The court concludes  
21 the probative value of the proffered evidence to establish intent and motive is high.  
22 The court will give a limiting instruction on the use of such evidence. This will  
23 minimize the risk and danger of any potential prejudice.

24           For these reasons, the defendant's motion to preclude 404(b) evidence as it  
25 relates to the defendant's 2007 Nevada and 2008 California convictions and the  
26 evidence underlying them is DENIED.

27           The court GRANTS the defendant's motion to preclude evidence of:

28           Statements made to B.M. and C.C. about the California conviction;

1 Proof of the defendant's probation and parole status and violations;  
2 Proof of the defendant's drug use and possession; and  
3 Proof that the Defendant possessed and used an EBT card.

4 The motion is granted on these categories of evidence because it is not  
5 relevant and would be unfairly prejudicial because of the cumulative nature of  
6 emphasizing defendant's propensity to engage in other criminal behavior.

7 The government is, however, entitled to offer proof that on August 26, 2014,  
8 the defendant was stopped by law enforcement and at the time was driving a silver  
9 BMW that matched the description and photograph provided to law enforcement by  
10 C.C. and N.C. No other details of this stop are admissible.

11 The court directs that a limiting instruction be presented to instruct the jury  
12 that the similar acts testimony is admitted for the limited purpose of showing the  
13 motive, intent, knowledge, or *modus operandi*, and that the defendant is on trial only  
14 for offenses alleged in the Superseding Indictment. This instruction will be read to  
15 the jury before the introduction of any such testimony and also be included in the  
16 final instructions to the jury.

17 **Motion for an Order Cautioning the Government Against Using the Term**  
18 **"Victim."**

19 Defendant seeks an order from this court cautioning the government against  
20 using the term "victim" to refer to C.C., N.C., B.M., and R.B.

21 The court notes the defendant provides no authority on point to support his  
22 contention that the use of the term "victim" during trial constitutes prejudicial error.  
23 At best, so long as reference to "victims" is supported by the evidence or the  
24 references are isolated, no prejudice results.

25 Setting aside the absence of authority, the government has agreed, and the  
26 court so directs, that it is to use all reasonable efforts to avoid referring to the women  
who are the subjects of the Superseding Indictment as victims. The court further

1      directs the government to refer to the women by their names or at most as the  
2      "alleged victims." This directive applies directly to witnesses other than  
3      Detective Stigerts.

4      As to Detective Stigerts, he may use the term "victims" when referring to  
5      categories of individuals if necessary to explain his testimony and to avoid confusion  
6      of the jury.

7      In either case, the court would expect a limiting instruction on the use of the  
8      term "victim."

9      For all of these reasons, the defendant's motion is DENIED with the  
10     understanding that the government comply with the directives of the court.

11     **Defendant's Motion to Preclude the Government's Evidence Relating to the**  
12     **Pregnancy of B. M.**

13     The essence of this motion centers around relevance and Rule 403 prejudice  
14     as it relates to testimony regarding the defendant's statements telling B.M. to  
15     terminate her pregnancy so she could continue to engage in acts of prostitution.

16     First, the court concludes the evidence is relevant. The psychological and  
17     emotional pressure to cause B.M. to undergo an abortion so she could return to acts  
18     of prostitution clearly meets the force and coercion component of the charge to make  
19     such evidence relevant.

20     To convict the defendant, the government must prove that the defendant knew  
21     that force, fraud, or coercion would be used to cause B.M. to work for him as a  
22     prostitute. The question thus must be analyzed under 403.

23     There can be no dispute about the potential volatility of introducing the topic  
24     of abortion in this trial. Abortion has been a dividing topic in this country and for  
25     years been a critical topic in various arenas from presidential debates to Supreme  
26     Court justice confirmations, and even the basis for some individuals to believe it  
   justifies the bombing of clinics performing abortion procedures.

1                   *United States v. Skillman*, 922 F.2d 1370, 1374 (9<sup>th</sup> Cir. 1991) cited by the  
2 government is instructive on answering the question whether the government's  
3 proposed evidence would cause unfair prejudice. That case defines such evidence as:  
4 "evidence which appeals to a jury's sympathies, arouses its sense of horror,  
5 provokes its instinct to punish, or otherwise may cause a jury to base its decision on  
6 something other than the established propositions in the case."

7                   The court agrees with the defendant on this motion. If the jury hears the  
8 evidence as proposed by the government, there is a significant risk such evidence  
9 would appeal to the pro-life component of the jury venire to the degree and extent it  
10 could cause them to base their decision on something other than the precise charges,  
11 and convict the defendant because he was the perceived motivating force in the  
12 termination of B.M.'s pregnancy.

13                   The court has considered jury instructions and voir dire as a means to address  
14 the topic of abortion. The court declines this proposal for fear the jury could get  
15 grossly sidetracked on the topic of abortion and not the underlying charges of the  
16 indictment.

17                   For these reasons, the defendant's motion is GRANTED.

18                   **Defendant's Motion Regarding the Applicability of ER 412.**

19                   Defendant suggests Rule 412 does not apply to cases that involve allegations  
20 which are the subject of the Superseding Indictment. Defendant is plainly wrong  
21 and his position is without merit or support.

22                   Highly apposite and squarely on point is *United States v. Rivera*, 799 F. 3d  
23 180, 185-186, where the court stated the following which this court adopts as the  
24 rule on this motion:

25                   "Evidence of victims' prior acts of commercial sex is irrelevant to whether  
26 those victims were coerced into working as prostitutes. Appellants wanted to cross-  
examine the testifying victims about prior work as prostitutes before Appellants

1 hired them to work in their bars. Appellants hoped to suggest that having already  
2 worked as prostitutes, the victims would not have been deceived by Appellants and  
3 that they 'knew what [they were] getting into.' But knowing that suggestive  
4 behavior or even sexual acts might become a part of the job does not mean that the  
5 victims therefore consented to being threatened or coerced into performing sexual  
6 acts they did not wish to perform. The very purpose of the Rule is to preclude  
7 defendants from arguing that because the victim previously consented to have sex –  
8 for love or money – her claims of coercion should not be believed."

9 The government has cited a host of cases which clearly support the same  
10 conclusion to acts by the victims in the instant matter subsequent to the time periods  
11 which are the subject of the Superseding Indictment.

12 The same applies to the Backpage.com advertisements featuring photographs  
13 of the women. The government is, however, permitted to offer as evidence those  
14 images that were posted during the timeframe that the victims were allegedly being  
15 trafficked or transported by the defendant. These images are relevant to the charges  
16 in the Superseding Indictment and not within the boundary prohibitions of 412.

17 For all of the foregoing reasons, the defendant's motion is DENIED.

### 18 **Defendant's Motion to Dismiss Count 3.**

19 Defendant moves to dismiss Count 3 on the grounds that this count is  
20 duplicitous and fails to give proper notice.

21 The government's proffer suggests it will seek to introduce evidence at trial  
22 that establishes that for approximately one year, the defendant engaged in a  
23 continuous course of conduct and employed various means – including recruiting,  
24 enticing, harboring, transporting, providing, and obtaining – to use force, fraud, and  
25 coercion to compel B.M. to engage in commercial sex acts.

26 A count in an indictment is duplicitous when it joins two or more distinct and  
separate offenses into a single count. This court concludes that Section 1591

1 proscribes the series of unlawful acts that are committed to further the single  
2 purpose of sex trafficking.

3 The statutory and legislative history of Section 1591 are abundantly clear that  
4 it is to be treated as a continuing offense. The court agrees with the government's  
5 analysis that, by its nature, sex trafficking is an ongoing course of conduct that  
6 causes harm as long as the conduct exists and perdures long beyond the original  
7 illegal act.

8 It would be nonsensical to charge the defendant as suggested by the defense.  
9 Such a charging scheme would result in numerous charges and expose the defendant  
10 to harsher penalties and guideline calculations.

11 In the instant case, the government has proffered that for the time period  
12 charged there is evidence that the defendant housed B.M. at his home and hotels,  
13 transported her to different states, directed her activities, provided her to various  
14 prostitution customers by posting on Backpage.com, drove her to date locations,  
15 barraged her with recruitment and enticement efforts to work for him as a prostitute,  
16 and involved her in various circumstances of emotional and physical abuse.

17 The totality of these events constitutes an ongoing course of conduct causing  
18 B.M. to engage in a single, continuous offense as properly charged.

19 The court in this finding also notes that Count 3 provides the defendant with  
20 sufficient notice to apprise him of the crime charged.

21 For all of the foregoing reasons, the defendant's motion to dismiss Count 3 of  
22 the Superseding Indictment is DENIED.

23 **Defendant's Motion to Suppress Statements Made in Rapid City.**

24 This motion necessitates a hearing in order to hear the evidence of the  
25 circumstances of the arrest and actions of the parties. The court RESERVES ruling  
26 on this motion.

1      **Defendant's Motion to Strike Government's Rule 16(a)(1)(G) Notice Regarding**  
2      **Detective Derek Stigerts.**

3      The defendant does not dispute having received from the government a  
4      summary of Detective Stigerts' proffered testimony. The defendant challenges the  
5      adequacy of the Rule 16(a)(1)(G) notice. The defense acknowledges, however, that  
6      the deficiency is remediable, and requests that the court direct the government to file  
7      an amended notice with greater specificity. The defense contends this will permit the  
8      court to then be able to make a finding as to whether the proffered testimony of the  
9      detective will help the jury understand the evidence or to determine a fact in issue.

10     FRCP 16(a)(1)(G) requires a written summary that describes the witness's  
11    opinions, the bases and reasons for those opinions, and the witness's qualifications.  
12    The court has reviewed the government's notice and finds it meets the requirements  
13    of the rule commanding the disclosure.

14     Included in the government's submission is Detective Stigerts' CV, which  
15    includes a detailed statement of his expert qualifications and summary of his  
16    experience in investigating sex trafficking cases. The summary includes the bases  
17    for his testimony, *i.e.*, the knowledge he gained through those investigations. The  
18    summary also includes in detailed fashion the topics and opinions about which he  
19    will be testifying. Nothing further is required.

20     The court further finds the proffered testimony of the detective to be relevant  
21    and of value to help the jury understand the evidence regarding the business of  
22    pimping and prostitution.

23     Detective Stigerts' training and experience qualify him as an expert on the  
24    business of prostitution and the relationships between pimps and prostitutes. As his  
25    CV reflects, among other experiences, he has vast experience in this arena, including  
26    having interviewed no less than 250 females involved in prostitution and 70 juvenile  
   victims of prostitution, interviewed no less than 20 suspected pimps regarding

1      prostitution and pimping, and participated in no less than 100 sex trafficking cases  
2      involving juvenile and adult women.

3      Detective Stigerts' proffered testimony is relevant to matters at issue in this  
4      case. As noted in *United States v. Brooks*, 610 F.3d 1186, (9<sup>th</sup> Cir. 2010), the  
5      relationship between pimps and prostitutes is not the subject of common knowledge.  
6      Hence, Detective Stigerts' testimony will help place the victims' testimony into  
7      context and provide the jury a means to assess their credibility and understand their  
8      testimony.

9      For these reasons, the defendant's motion is DENIED.

10     **Defendant's Motion for an Order Permitting the Defense to Offer Certain**  
11     **Proof.**

12     Pursuant to Rule 412(a), the defendant has filed this motion seeking the  
13     court's approval to examine witnesses on eight categories of claimed unrelated  
14     commercial sex acts. The court rules on each separately.

15     A.     Evidence regarding names previously used by B.M., C.C. and N.C.

16     Defense seeks to examine the witnesses about their prior use of false names  
17     on Backpage.com advertisements. While the bare essence of this request may go to  
18     the issue of the truthfulness and open the door to examination, such evidence is  
19     inadmissible under FRE 403. The probative value of such evidence does not  
20     significantly outweigh possible harm to the victims. Eliciting names used on  
21     Backpage.com appears to have no other legitimate bases for admission than to  
22     suggest or infer that the women were advertising on Backpage.com as prostitutes  
23     before and after meeting the defendant. The sole purpose of such an offering is to  
24     suggest the sexual predisposition of the victims, which is prohibited.

25     As stated in the Commentary to Rule 412:

26     "The inclusion of the term 'sexual predisposition' is intended to provide  
broader protection of the alleged victim than 'sexual behavior' alone. By prohibiting

1 any evidence that may obliquely connote the alleged victim's sexual activity to the  
2 fact finder, Rule 412(a)(2) serves the Rule's policy objectives of safeguarding the  
3 alleged victim from irrelevant stereotyping and protecting the alleged victim from  
4 potential embarrassment. Consequently, evidence of an alleged victim's mode of  
5 dress, speech or lifestyle will be prohibited by the exclusionary principle of Rule 412  
6 unless one of the exceptions applies."

7 Thus, the names the victims may have previously or subsequently used are  
8 not relevant and no examination is permitted.

9       B.     Evidence regarding statements C.C. and N.C. made about age.

10 The defendant seeks to introduce evidence regarding statements that C.C. and  
11 N.C. made about their ages in Backpage.com advertisements and to the defendant.  
12 The defendant's desire to offer such evidence for the sole purpose of attacking their  
13 credibility is inadmissible if it is offered to establish what they told the defendant  
about their respective ages.

14       Defendant's knowledge of the age of the victims or that he reasonably  
15 believed they were eighteen years old or older is not an element of Counts 1 and 2.  
16 18 U.S.C. § 2423(a). *See United States v. Taylor*, 239 F.3d 994, 997 (9<sup>th</sup> Cir. 2001).  
17 Because knowledge of the victim's age is not an element required for conviction  
18 under Section 2423(a), and does not constitute an affirmative defense to the crime,  
19 any evidence or argument relating to the defendant's knowledge of their ages is  
20 irrelevant and inadmissible.

21       The defendant **is** permitted, however, to examine the two witnesses regarding  
22 false statements they made about their ages on Backpage.com, but only statements  
23 made during the specific time periods reflected in the Superseding Indictment. This  
24 would go to their credibility and truthfulness, a factor proper for jury consideration.  
25 The defendant is **not** permitted, however, to examine the witnesses about any  
26 Backpage.com postings by these witnesses outside of the charging periods because

1 to do so would constitute evidence regarding “other sexual behavior,” and that is  
2 prohibited under Rule 412.

3       C.     Evidence regarding C.C.’s statements to law enforcement officers  
4     about N.C.

5       The defendant seeks to offer evidence to impeach C.C., with statements she  
6     allegedly made about N.C. not having been previously involved in prostitution.  
7       Even if this court were to accept that C.C. definitively and unequivocally made such  
8     statements, the examination would be prohibited. To allow otherwise would permit  
9     the defense to introduce evidence of Backpage.com advertisements featuring N.C.  
10    As previously noted, evidence regarding N.C.’s prior connection with prostitution is  
11   prohibited by Rule 412 and case law.

12       D.     Evidence of the Humboldt, California Backpage.com advertisement  
13     and C.C.

14       Defendant seeks to question C.C. about her interview with Officer Barrera  
15     and her statement about “never been to Cali” before. The defendant is permitted to  
16     pursue this line of examination. If the witness denies the statement, the defense is  
17     permitted to impeach her and prove up her prior inconsistent statement through the  
18     examination of Officer Barrera. The defense may not introduce the Backpage.com  
19     advertisement as extrinsic proof.

20       E.     Evidence regarding C.C.’s suggestive clothing.  
21       As previously noted, evidence of a victim’s mode of dress, speech, or  
22     lifestyle is prohibited by the exclusionary principle of Rule 412

23       F.     Evidence regarding the victim’s motive.  
24       The defendant suggests that C.C. may have been awaiting disposition of  
25     criminal charges during times she was interviewed by law enforcement officers and  
26     thus had a motive to make certain statements. The government has represented that  
   nothing in C.C.’s criminal history indicates she was on probation or awaiting

1 disposition of criminal charges at the time she made statements to law enforcement.  
2 Consequently, there is no basis to impeach her on these grounds.

3 The defendant also seeks to examine C.C. and N.C. about the timing of their  
4 interviews, *i.e.*, during the evening hours. This will be permitted. The defense will  
5 also be permitted to inquire about who called C.C.'s cell phone during the March 31  
6 interview. If the nature of the call would result in revealing incidents of activity  
7 precluded by Rule 412, then this area of examination is precluded.

8 Regarding B.M., the defense seeks to examine her regarding the fact that her  
9 March 10, 2015 interview with law enforcement came about after she was  
10 encountered in connection with a prostitution sting. The government concedes that  
11 the fact that B.M.'s statement was immediately preceded by her contact with law  
12 enforcement is a proper topic of cross-examination. The defendant is permitted to  
13 ask the question in the context of a prostitution sting.

14 **G. Evidence that B.M. made a false statement about wanting to visit her**  
**brother in California.**

15 The defense has provided this court with no information or bases to conclude  
16 that B.M.'s statement was false or to conclude that she did not have a desire to visit  
17 her brother. Moreover, the defense has not articulated the probative value of such  
18 examination or the possible responses thereto. The defendant's request is thus  
19 denied.

20 **H. Evidence that B.M. was subsequently involved in prostitution or**  
**associated with another pimp.**

21 The defendant seeks to offer evidence that B.M. was engaged in prostitution  
22 after the dates she was criminally associating with him and may have subsequently  
23 associated with another pimp.

24 For the reasons and analysis previously noted under Rule 412, this line of  
25 examination or evidence is clearly not admissible. Such evidence has no relevance  
26 or impeachment value whatsoever.

1 For all of the foregoing reasons, the defendant's motions under this section of  
2 this Order are GRANTED in part and DENIED in part.

3

4 **Defendant's Motion to Sever Counts 1 and 2 from Counts 3 and 4.**

5 Defendant seeks severance of Counts 1 and 2 from Counts 3 and 4 on the  
6 grounds of Rule 8(a), contending they are not of the same or similar character, are  
7 not based on the same act or transaction, and are not part of a common scheme or  
8 plan. In the alternative, the defendant seeks to invoke the authority of Rule 14 to  
9 grant a separate trial on grounds that joinder will result in substantial prejudice.

10 Both parties agree that *United States v. Jawara*, 474 F.3d 565 (9<sup>th</sup> Cir. 2007)  
11 is of significant precedential value in this analysis. *Jawara* notes the key question to  
12 ask is whether commission of one of the offenses either constituted or depended  
13 upon proof of the other. The court also noted that when the counts are logically  
14 related, and there is a large area of overlapping proof, joinder is appropriate. *Jawara*,  
474 F.3d at 574.

15 The court agrees with the government that joinder is proper. The facts as  
16 alleged in the Superseding Indictment suggest that all four of the counts are logically  
17 related in that the proffered evidence from the government articulates an  
18 overarching, continuing scheme and plan to have females engage in commercial acts  
19 and travel in interstate commerce for the purpose of prostitution.

20 This evidence includes proffered overlapping proof that the defendant began  
21 sex trafficking with B.M., after he contacted her through the number she had posted  
22 on a Backpage.com advertisement in January, 2014. Allegedly he transported her to  
23 Washington to engage in prostitution. When she became too ill to perform sex acts,  
24 the defendant recruited C.C. and N.C. to travel with him to California. The  
25 government's proffer includes the representation that while B.M. did not accompany  
26 them to California, she stayed in contact, and she and C.C. had communication  
about the defendant's alleged coercive conduct in California.

1        The government's proffer includes the representation that an abundance of  
2 the proposed testimony in this case would be overlapping if two trials were required  
3 from severance. The evidence includes numerous categories of evidence that would  
4 overlap if separate trials were ordered. This includes the testimony of B.M., C.C.,  
5 and N.C., who have all met, and are corroborating witnesses in all four of the  
6 charged offenses; law enforcement witnesses from various states who were involved  
7 in investigating the defendant's sex trafficking and prostitution activities; law  
8 enforcement officers who analyzed various electronic devices seized in connection  
9 with this investigation; an expert witness in the field of sex trafficking and interstate  
10 prostitution; and records custodians to testify about relevant records that allegedly  
11 corroborate the victims' statements. Requiring these witnesses to testify twice  
12 would also be a grossly inefficient use of court resources, and the overlapping nature  
13 of the evidence is overwhelming.

14        Consequently the court finds the counts are properly joined, logically related,  
15 depend upon proof of the other, and there are large areas of overlapping proof.

16        Moreover, the face of the Superseding Indictment makes clear that the  
17 various counts relate to each other in the following ways:

18        First, Counts 1, 2 and 4 are similar in that they allegedly involve the interstate  
19 transportation of persons by the defendant for the purpose of prostitution, which  
20 offenses have nearly the same elements except for the underage requirement in  
Counts 1 and 2;

21        Second, all four counts allegedly occurred in part in King County in 2014;

22        Third, the defendant's alleged interstate transportation of C.C. and N.C. took  
23 place within the time frame that he is alleged to have been trafficking B.M. through  
24 force, fraud and coercion; and

25        Fourth, all four crimes involve a similar *modus operandi* in both groups of  
26 charges in how the defendant allegedly identified and created online relationships  
before attempting to recruit them for acts of prostitution.

1           The court will not restate all of the connecting links noted by the government  
2 in its briefing, but suffice it to say they have convinced the court that joinder under  
3 the rules was proper.

4           The defendant also raises the issue of prejudice resulting from joinder. The  
5 court does not find this argument persuasive. Even if the trials were severed,  
6 evidence relating to defendant's trafficking of B.M. would be admissible in a trial on  
7 Counts 1 and 2 as to the defendant's *modus operandi* and intent.

8           In addition, B.M. appears to be ready to present testimony of numerous  
9 conversations she had with the defendant regarding his interactions with C.C. and  
10 N.C. Similarly, it is apparent C.C. and N.C. are equally available to testify about the  
11 defendant's interactions with B.M. and the defendant's statements about his  
12 relationship with her.

13           All of these circumstances weigh greatly against the defendant and any claim  
14 of prejudice from joint trials.

15           To minimize any potential prejudice, the court will give at the appropriate  
16 times during trial the Ninth Circuit Model Instruction 3.11 on the separate  
17 consideration of crimes and counts.

18           For all of the foregoing reasons, the defendant's motion to sever is DENIED.

19           **Defendant's Motion for a Daubert Hearing re: Expert Testimony**

20           Defendant appears to accept the Ninth Circuit precedent that our courts have  
21 affirmed the admission of expert testimony regarding the area of prostitution offered  
22 by law enforcement officers. His motion appears to be directed to whether Detective  
23 Stigerts is qualified to serve as such an expert, whether his proffered testimony is  
24 supported by solid reasons and methodology, and relevant to the case at bar.

25           The court directs the government to have Detective Stigerts available for  
26 examination at either of the scheduled dates for pretrial motions, *i.e.*, February 11th  
or 12th. The parties are to meet and confer whether the witness's availability for

1 examination via video conferencing is an acceptable method of receiving his  
2 testimony.

3

4 **Government's Motion to Exclude Evidence of Victims' Other Sexual Behavior**  
**and Sexual Predisposition.**

5 The court has ruled on defendant's motion regarding the applicability of  
6 Evidence Rule 412 and has denied the defendant's motion. Accordingly, the court  
7 GRANTS the government's motion prohibiting the defendant from: (1) introducing  
8 evidence that C.C., N.C., or B.M., engaged in commercial sex acts before or after  
9 leaving the defendant; (2) questioning any of these women about their prior or  
10 subsequent and unrelated prostitution activity; and (3) otherwise referencing such  
11 inadmissible evidence during *voir dire*, opening statements, and closing arguments.

12

13 **Government's Motion to Preclude Mistake-of-Age Defense and Evidence.**

14 The court has ruled on the defendant's motion regarding statements C.C. and  
15 N.C. made about age and the parties are directed to comply accordingly.

16

17 **Government's Motion to Exclude Evidence of Consent.**

18 The Court GRANTS the government's motion precluding evidence of  
19 consent relating to C.C. and N.C. Lack of consent is not an element of Counts 1 and  
20 2. Moreover, numerous courts have affirmed that consent is not a defense to  
21 transportation of a minor for purpose of prostitution and this court holds  
22 accordingly.

23 The court DENIES the government's motion regarding B.M. Counts 3 and 4  
24 charge that B.M. engaged in prostitution activities as the result of force, fraud and  
25 coercion. The defense is entitled to argue to the jury that B.M. voluntarily engaged  
26 in commercial sex activities, was free to leave, and was not forced or coerced to  
remain.

1 For these reasons, the court GRANTS in part and DENIES in part the  
2 government's motion.

3 DATED this 10th day of February, 2016.

4   
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6 The Honorable Richard A. Jones  
7 United States District Judge  
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## **APPENDIX C**

1 The Honorable Richard A. Jones  
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3  
45 Presented to the Court by the foreman of the  
6 Grand Jury in open Court, in the presence of  
7 the Grand Jury and FILED in the U.S.  
8 DISTRICT COURT at Seattle, Washington.9 OCTOBER 28 2015  
10 WILLIAM M. McCOOL, Clerk  
11 Deputy12 UNITED STATES DISTRICT COURT FOR THE  
13 WESTERN DISTRICT OF WASHINGTON  
14 AT SEATTLE15 UNITED STATES OF AMERICA,  
16 Plaintiff,

17 NO. CR15-244 RAJ

18 **SUPERSEDING INDICTMENT**19 v.  
2021 ROBERT RYAN POWELL,  
22 Defendant.

23 The Grand Jury charges that:

24 **COUNT ONE**25 **(Transportation of a Juvenile (C.C.) with Intent to Engage in Prostitution)**26 During August 2014, in Mountlake Terrace, within the Western District of  
27 Washington, and elsewhere, ROBERT RYAN POWELL did transport C.C., a juvenile  
28 female, in interstate and foreign commerce, from Washington State, to San Jose,  
California, with the intent that C.C. engage in prostitution or sexual activity for which  
any person can be charged with a criminal offense.

29 All in violation of Title 18, United States Code, Section 2423(a).

30 **COUNT TWO**31 **(Transportation of a Juvenile (N.C.) with Intent to Engage in Prostitution)**32 During August 2014, in Mountlake Terrace, within the Western District of  
33 Washington, and elsewhere, ROBERT RYAN POWELL did transport N.C., a juvenile

1 female, in interstate and foreign commerce, from Washington State, to San Jose,  
2 California, with the intent that N.C. engage in prostitution or sexual activity for which  
3 any person can be charged with a criminal offense.

4 All in violation of Title 18, United States Code, Section 2423(a).

5 **COUNT THREE**

6 **(Sex Trafficking of B.M. by Force, Fraud and Coercion)**

7 Beginning in or about January 2014, and continuing until on or about January 13,  
8 2015, in King County, within the Western District of Washington, and elsewhere,  
9 ROBERT RYAN POWELL did, in and affecting interstate commerce, knowingly recruit,  
10 entice, harbor, transport, provide, and obtain by any means, an adult female, B.M.,  
11 knowing that force, fraud, and coercion, and any combination of such means, would be  
12 used to cause B.M. to engage in commercial sex acts.

13 All in violation of Title 18, United States Code, Sections 2, 1591(a)(1) and  
14 1591(b)(1).

15 **COUNT FOUR**

16 **(Transportation of B.M. for the Purpose of Prostitution Through  
Coercion and Enticement)**

17 On or about June 4, 2014, in King County, within the Western District of  
18 Washington, and elsewhere, ROBERT RYAN POWELL did knowingly persuade,  
19 induce, entice and coerce, and did attempt to persuade, induce, entice and coerce, an adult  
20 female, B.M. to travel in interstate commerce, specifically, from the State of Washington  
21 to the State of Nevada, to engage in prostitution and any sexual activity for which any  
22 person can be charged with a criminal offense.

23 All in violation of Title 18, United States Code, Sections 2422(a) and 2.

24 **NOTICE OF CRIMINAL FORFEITURE**

25 Pursuant to Title 18, United States Code, Section 2428(a), Title 18, United States  
26 Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), the grand  
27 jury alleges that upon conviction of the offenses charged in Counts One through Four  
28

**113a**

1 above, ROBERT RYAN POWELL shall forfeit to the United States of America any  
2 interest in any property, real or personal, that was used or intended to be used to commit  
3 or to facilitate the commission of such violation; and any property, real or personal,  
4 constituting or derived from any proceeds that such person obtained, directly or  
5 indirectly, as a result of such violation.

6 If any forfeitable property, as a result of any act or omission of ROBERT RYAN  
7 POWELL cannot be located upon the exercise of due diligence, has been transferred or  
8 sold to, or deposited with, a third party, has been placed beyond the jurisdiction of the  
9 Court, has been substantially diminished in value, or has been commingled with other  
10 property which cannot be divided without difficulty, it is the intent of the United States,  
11 pursuant to Title 21, United States Code, Section 853(p), to seek the forfeiture of any  
12 property of ROBERT RYAN POWELL.

13 A TRUE BILL:

14 DATED: 10-28-75

15 *Signature of foreperson redacted*  
16 *pursuant to the policy of the Judicial*  
17 *Conference of the United States*18 

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FOREPERSON19 

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20  
21 ANNETTE L. HAYES

22 United States Attorney

23 

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24 TODD GREENBERG

25 Assistant United States Attorney

26 

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27 CATHERINE L. CRISHAM

28 Assistant United States Attorney

UNITED STATES v. POWELL/CR15-244 RAJ  
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