

No. \_\_\_\_\_

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**In the**  
**Supreme Court of the United States**

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PRINCE BIXLER,

*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 Sixth Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Whether Bixler's rights under the Fifth and Sixth Amendments to the United States Constitution were violated by a pretrial ruling that he could not cross-examine the alleged victims regarding their prior involvement in prostitution based on the trial court's interpretation of Federal Rule of Evidence 412 as a result of this ruling?
2. Whether the element of force in 18 U.S.C. § 1591(b)(1) can be satisfied based on providing controlled substances to previously addicted individuals already engaged in prostitution?
3. Whether increase of Bixler's base offense level by four levels for use of force constituted impermissible double counting since one of the essential elements of 18 U.S.C. § 1591(b)(1) is force and whether imposition of a vulnerable victim enhancement also constituted impermissible double counting because each of the alleged sex trafficking victims was already addicted to heroin when they met Bixler?

## **LIST OF PROCEEDINGS**

United States Court of Appeals for the Sixth Circuit  
No. 21-5194

United States of America, *Plaintiff-Appellee*, v.  
Prince Bixler, *Defendant-Appellant*.

Date of Final Opinion: January 27, 2022

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United States District Court, Eastern District of  
Kentucky, Central Division

No. 5:18-CR-68-REW-MAS

United States of America, *Plaintiff*, v.  
Prince Bixler, *Defendant*.

Date of Final Judgment: February 25, 2021

**TABLE OF CONTENTS**

	Page
QUESTIONS PRESENTED .....	i
LIST OF PROCEEDINGS.....	ii
TABLE OF AUTHORITIES .....	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW .....	1
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION.....	6
I. UNCONSTITUTIONAL APPLICATION OF FEDERAL RULE OF EVIDENCE 412 .....	6
II. PROVIDING CONTROLLED SUBSTANCES TO Satisfy FORCE ELEMENT OF 18 U.S.C. § 1591(b)(1) .....	10
III. IMPERMISSIBLE DOUBLE COUNTING .....	13
CONCLUSION.....	15

**TABLE OF CONTENTS – Continued**

Page

**APPENDIX TABLE OF CONTENTS**

Opinion of the United States Court of Appeals for the Sixth Circuit (January 27, 2022).....	1a
Judgment in a Criminal Case of the United States District Court for the Eastern District of Kentucky (February 25, 2021) .....	28a
Order of the United States District Court for the Eastern District of Kentucky on Motions in Limine (August 12, 2020).....	40a
Relevant Statutory Provisions .....	57a

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Davis v. Alaska</i> ,	
415 U.S. 308 (1974) .....	7, 8
<i>Delaware v. Van Arsdall</i> ,	
475 U.S. 673 (1986) .....	7, 8
<i>Lewis v. Wilkinson</i> ,	
307 F.3d 413 (6th Cir. 2002) .....	7
<i>Olden v. Kentucky</i> ,	
488 U.S. 227 (1988) .....	7
<i>United States v. Givhan</i> ,	
740 Fed. Appx. 458 (6th Cir. 2018).....	6, 9
<i>United States v. Hyson</i> ,	
721 F.2d 856 (1st Cir. 1983).....	12
<i>United States v. Mack</i> ,	
808 F.3d 1074 (6th Cir. 2018) .....	6, 9
<b>CONSTITUTIONAL PROVISIONS</b>	
U.S. Const. amend. V.....	passim
U.S. Const. amend. VI .....	passim
<b>STATUTES</b>	
18 U.S.C. § 1512.....	2
18 U.S.C. § 1591.....	2, 10
18 U.S.C. § 1591(b)(1) .....	passim
18 U.S.C. § 2241(a) .....	13
18 U.S.C. § 2241(b) .....	13
21 U.S.C. § 841.....	2

**TABLE OF AUTHORITIES – Continued**

	Page
28 U.S.C. § 1254(1) .....	1
USSG § 2A3.1(b)(1) .....	5, 13
USSG § 3A1.1(b)(1) .....	6, 13

**JUDICIAL RULES**

Fed. R. Evid. 412.....	passim
Fed. R. Evid. 412(b)(1)(C) .....	7, 9
Sup. Ct. R. 13.1 .....	1



## **PETITION FOR A WRIT OF CERTIORARI**

Prince Bixler petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.



## **OPINIONS BELOW**

The Opinion of the United States Court of Appeals for the Sixth Circuit, dated January 27, 2022, is included at App.1a. The Entry of Criminal Judgment of the United States District Court for the Eastern District of Kentucky, dated February 25, 2021, is included at App.28a. The district court Order, dated August 12, 2020, regarding exclusion of evidence under FRE 412 is included at App.40a. These opinions were not designated for publication.



## **JURISDICTION**

The Sixth Circuit entered judgment on January 27, 2022. (App.1a) This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).



## **STATUTORY PROVISIONS INVOLVED**

This case involves application of Federal Rule of Evidence 412 in prosecutions for alleged violations of 18 U.S.C. § 1591. The text of each of these provisions is contained at App.57a.



## **STATEMENT OF THE CASE**

Bixler was originally indicted on a single heroin distribution count on June 7, 2018. However, based upon an “investigation” conducted by a Lexington, Kentucky narcotics detective, Todd Hart, whose investigatory tactics had been questioned, and ultimately did not testify at Bixler’s trial, a Superseding Indictment was returned on September 19, 2019, charging Bixler with four counts of forced sex trafficking in violation of 18 U.S.C. § 1591 (Counts 1-4), two counts of tampering with a witness in violation of 18 U.S.C. § 1512 (Counts 5-6), four counts of distributing a controlled substance in violation of 21 U.S.C. § 841 (Counts 8-11), and three counts of being a felon in possession of a firearm (Counts 12, 13, and 16).

Although the case started as a drug trafficking prosecution, almost every witness called as a witness regarding the sex trafficking charges leveled against Bixler was initially interrogated by Hart and, in the case of several, Hart performed some favor for them as a result of their “cooperation”. *See, e.g.,* Testimony of Savanah Godown, R. 214, Tr., Day 2, Page ID ##2410-2412 (robbery charge reduced/checks on status of her

dog while she is in custody); Testimony of Savanah Evans, R. 214, Tr., Day 2, Page ID #2461 (initial interview was with Hart); Testimony of Kaitlyn Moore, R. 214, Tr., Day 2, Page ID #2330 (Hart let her leave house which was being searched pursuant to a warrant); Testimony of Sidney McCarty, R. 220, Tr. Day 3, Page ID #3625 (Hart assisted in getting revealing video removed from internet); Adrienne Ratliff, R. 220, Tr., Day 3, Page ID #3659, (Hart told her Bixler had been with more women than her and that Bixler had a sexually transmitted disease); Testimony of Aimee Payton, R. 220, Tr., Day 3, Page ID #3712 (interviewed by Hart); Testimony of Thomas Clements, R. 215, Tr., Day 4, Page ID #2620 (Lexington narcotics detective who confirmed that Hart was lead investigator); Testimony of Rita, R. 220, Tr., Day 3, Page ID #3778 (interviewed by Hart); Testimony of Rob Sinnott, R. 215, Tr., Day 4, Page ID #2785 (Lexington narcotics detective who confirmed that Hart was lead investigator); Jamie Caudill, R.216, Tr., Day 5, Page ID ##2839-2850 (confidential informant used on drug trafficking counts whose family was close to Hart and who he did not arrest when she brought illegal drugs to a controlled buy); Testimony of Amy Bailey, R. 216, Tr., Day 5, Page ID #2882 (interviewed by Hart; calls him Dad). Despite Hart's converting the focus of the investigation to sex trafficking and his pervasive involvement in the investigation, he was not called by the United States as a witness at trial.

In essence, the United States contended that Bixler "forced" each of the alleged victims to engage in prostitution by supplying them heroin. His ability to contravene this allegation was significantly diminished by a pretrial ruling that he could not cross-examine

the alleged victims regarding their prior involvement in prostitution. Furthermore, the jury was unduly influenced by the testimony of a psychiatrist who had never seen, spoke with or examined any of the alleged victims but was allowed to testify over Bixler's objection regarding they were vulnerable to influence because of their heroin addictions.

The testimony of the three alleged victims of sex trafficking for which convictions were obtained underscores that Bixler's Fifth and Sixth Amendment rights were violated in limiting his ability to cross-examine his accusers. For example, Savanah Godown conceded she was already using drugs when she met Bixler. In her initial interview with Hart, she told him that she did not work for Bixler. Her testimony was also particularly suspect because she volunteered at various times during her testimony that "she has taken so many drugs she doesn't remember" and that she "could not remember last week."

Similarly, Savanah Evans testified that she had posted on Backpage with Crystal Rowe and Godown (an internet site used to advertise prostitution) during the time period Bixler was supposedly forcing her to engage in prostitution and that she was already using heroin when she met Bixler. She had also testified on a prior occasion that she posted her own advertisements on Backpage and said she was never told she could not leave the hotels where she engaged in prostitution and that she left on several occasions. A series of texts and letters that she sent to Bixler even after he was incarcerated demonstrated that she was not in fear of Bixler and was desirous of being in a romantic relationship with him. Over Bixler's objection, Evan's testimony was not stricken although she

testified that she had used heroin the day she was called as a witness. Furthermore, Rowe's testimony should not have been admitted as rebuttal since it was not proper rebuttal testimony.

Kaitlyn Moore only knew Bixler for nine days, and first met him when she was soliciting him for paid sex on someone else's Backpage account. She indicated that she paid Bixler for the drugs she purchased from him and initially made enough to keep money she earned from prostitution. Sidney McCarty, an alleged sex trafficking victim who was the subject of dismissed Count 4, testified that she and Moore posted on Backpage together and would split the money they earned. Text messages Moore sent to Bixler revealed that she did not fear him and that she was pursuing an intimate relationship with him. She also admitted she was injecting heroin prior to meeting Bixler.

Prior to trial, the District Court barred Bixler from introducing evidence that the alleged victims were engaged in commercial sex acts before their association with him, after his arrest and detention pending trial, or both. The Sixth Court dispensed of Bixler's argument that this restriction violated his Fifth and Sixth Amendment rights in less than two pages that lacked any meaningful analysis of the issue.

A presentence report was prepared in advance of Bixler's sentencing hearing. Bixler objected to application of USSG § 2A3.1(b)(1) to increase the base offense level by four levels for use of force would constitute impermissible double counting since 18 U.S.C. § 1591 (b)(1) since one of the essential elements of that statute is force. Bixler also objected to a vulnerable victim enhancement of his offense level pursuant to USSG § 3A1.1(b)(1) as impermissible double counting because

each of the alleged sex trafficking victims was already addicted to heroin when they met Bixler. The Trial Court rejected each of these arguments and the Sixth Circuit summarily affirmed the trial court's application of the enhancements in a short single paragraph.



## **REASONS FOR GRANTING THE PETITION**

This Court should review Bixler's conviction and consider the application of FRE 412 in his case in and *Mack* and *Givhan* to preserve criminal defendants' rights under the Fifth and Sixth Amendments to the United States Constitution. The Court should also determine whether the element of force in 18 U.S.C. § 1591(b)(1) can be satisfied based on providing controlled substances to previously addicted individuals already engaged in prostitution without violating the accused's rights under the Fifth Amendment to the United States Constitution.

The Court should also grant certiorari to address impermissible double counting of alleged offense conduct in imposing sentence on Bixler.

### **I. UNCONSTITUTIONAL APPLICATION OF FEDERAL RULE OF EVIDENCE 412.**

During interviews with at least two of the alleged sex trafficking victims and other potential witnesses, the alleged victims and witnesses acknowledged participation in commercial sex acts either before their alleged association with Mr. Bixler, after his arrest and detention pending trial, or both. The District Court barred Bixler from introducing evidence that the alleged victims were engaged in commercial sex acts

before their association with him, after his arrest and detention pending trial, or both and the Sixth Circuit affirmed the District Court's curtailment of Bixler's cross-examination of his accusers. In so doing, the District Court and Sixth Circuit denied Bixler his right to due process and to confront his accusers under the Fifth and Sixth Amendments to the United States Constitution.

Federal Rule of Evidence 412 generally bars evidence of "other sexual behavior" and "sexual predisposition." However, it includes an exception requiring admission of evidence "whose exclusion would violate the defendant's constitutional rights." FRE 412(b) (1)(C). Both this Court and the Sixth Circuit have previously held that rape shield laws and other similar rules of evidence cannot be applied to deprive a defendant of his constitutionally-protected right to cross-examine a witness concerning bias or motive to lie. *Olden v. Kentucky*, 488 U.S. 227, 232 (1988); *Lewis v. Wilkinson*, 307 F.3d 413, 420 (6th Cir. 2002).

The Confrontation Clause of the Sixth Amendment guarantees the right of an accused in a criminal prosecution "to be confronted with the witnesses against him." *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986). The right to confrontation includes the right to conduct reasonable cross-examination. *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974). Cross-examination is the "principal means by which the believability of a witness and the truth of his testimony are tested." *Id.* at 316. "Subject always to the broad discretion of the trial judge to preclude repetitive and unduly harassing interrogation," the cross-examiner is permitted to impeach and discredit the witness. *Id.* In *Davis*, this Court distinguished between a "general

attack” on the credibility of a witness, in which the cross-examiner intends to show that the witness is less truthful than the average trustworthy citizen, and a more “particular attack” on credibility directed toward “revealing possible biases, prejudices, or ulterior motives as they may relate directly to issues or personalities in the case at hand.” 415 U.S. at 316. The “particular attack” on a witness’s ulterior motives and biases is “a proper and important function of the constitutionally protected right of cross-examination” subject to fewer restrictions and limitations than the “general attack.” *Id.* Thus, a criminal defendant “states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness” to expose facts from which the jurors could “appropriately draw inferences relating to the reliability of the witness.” *Van Arsdall*, 475 U.S. at 680.

Some of the alleged victims were by their own admission engaged in prostitution prior to their alleged association with Bixler, after his arrest and detention pending trial, or both. Thus, they admitted participation in illegal activities and had a clear motive to offer testimony they viewed as favorable to the Government to avoid any perceived possibility of prosecution for their own criminal activities. Consequently, the Sixth Amendment required that Bixler be allowed to cross-examine the victims regarding their involvement in prostitution to demonstrate their bias.

More importantly, evidence that the alleged victims engaged in this conduct before, after or during their association with Bixler went to the very core of whether they were forced, tricked or coerced into

engaging in commercial sex acts. In order to convict Bixler, an essential element of proof for the United States was to prove that Bixler used “force, threats of force, fraud, and coercion” to “cause [Alleged Victims A-D] to engage in a commercial sex act . . . .” As a result, Bixler was denied due process because he could not present proof that tended to demonstrate that the alleged victims participated in commercial sex acts on their own volition.

The District Court and Sixth Circuit cited the Sixth Circuit’s prior decisions in *United States v. Mack*, 808 F.3d 1074 (6th Cir. 2018) and *United States v. Givhan*, 740 Fed. Appx. 458 (6th Cir. 2018) in granting the United States’ request to limit Bixler’s cross-examination. Each of these cases was distinguishable. In *Mack*, this Court relied upon the “consent exception” of FRE 412 rather than the constitutional exception in FRE 412(b)(1)(C). Similarly, in *Givhan* the accused only raised, and this Court only addressed issues regarding violation of the Sixth Amendment Confrontation Clause and did not analyze whether prohibiting proof on an essential element of a charged offense violates a defendant’s right to due process. Moreover, this Court should review Bixler’s conviction to determine whether the Sixth Circuit’s application of *Mack* and *Givhan* in Bixler’s case and in future cases violates criminal defendants’ rights under the Fifth and Sixth Amendments to the United States Constitution.

Introduction of proof of the alleged victims and other witnesses’ participation in commercial sex acts either before their association with Bixler, after his arrest and detention pending trial, or both were necessary to preserve Bixler’s rights under the Fifth and Sixth Amendments to the Constitution. Consequently,

this Court should grant certiorari, determine that Bixler's Fifth and Sixth Amendment rights were violated by the District Court's curtailment of the cross-examination of alleged victims, set aside his conviction, remand to the District Court, and instruct the District Court to conduct a new trial without limiting Bixler's ability to cross-examine alleged victims and witnesses.

## **II. PROVIDING CONTROLLED SUBSTANCES TO SATISFY FORCE ELEMENT OF 18 U.S.C. § 1591(b)(1).**

As described above, the evidence submitted by the United States to prove the force element of 18 U.S.C. § 1591(b)(1) was almost exclusively evidence that Bixler's allegedly provided heroin to previously addicted women constituted force who were also previously engaged in prostitution. Such an interpretation is an unconstitutional application of the statute because it does demonstrate the use of force by the accused. Consequently, this Court should grant certiorari, determine that such an application of 18 U.S.C. § 1591(b)(1) violates the Fifth Amendment to the United States Constitution.

18 U.S.C. § 1591 requires the United States to prove, *inter alia*, the alleged offense "was effected by means of force, fraud, or coercion . . ." The proof primarily relied upon by the United States to attempt to demonstrate coercion was Bixler's alleged provision of heroin to women previously engaged in prostitution.

The testimony of the three alleged sex trafficking victims for which convictions were obtained was insufficient to support a conviction since there was no credible proof that any of them were forced by Bixler

to engage in prostitution. Savanah Godown conceded she was already using drugs when she met Bixler and that she had been involved with prostitution prior to her relationship with Bixler. R. 214, Tr., Day 2, Page ID #2381. Significantly, in her initial interview with Detective Hart, she told him that she did not work for Bixler. *Id.* at Page ID #2407. Her testimony was also particularly suspect because she volunteered at various times that “she has taken so many drugs she doesn’t remember” and that she “could not remember last week.” *Id.* at Page ID ##2409-2410, 2418.

Similarly, Savanah Evans testified that she had posted on Backpage with Crystal Rowe and Godown (an internet site used to advertise prostitution) during the time Bixler was supposedly forcing her to engage in prostitution and that she was already using heroin when she met Bixler. R. 214, Tr., Day 2, Page ID ##2457-2458, 2462. She had also testified that on a prior occasion that she posted her own advertisements on Backpage. *Id.* at Page ID #2464. She said she was never told she could not leave the hotels where she engaged in prostitution and that she left on several occasions. *Id.* at Page ##2464-2465. She also testified that she lived out of town for a good portion of the time when Bixler is accused of sex trafficking. *Id.* A series of texts and letters that she sent to Bixler even after he was incarcerated demonstrated that she was not in fear of Bixler and was desirous of being in a romantic relationship with him. *Id.* at Page ID ##2466-2475. Over Bixler’s objection, Evan’s testimony was not stricken although she testified that she had used heroin the day she was called as a witness. *Id.* at Page ID ##2459-2463. The District Court should have stricken her testimony because of her obvious

intoxication and rendered her testimony insufficient to support a conviction on Count 2. *See, e.g., United States v. Hyson*, 721 F.2d 856, 864 (1st Cir. 1983) (intoxicated witnesses testimony stricken and jury admonished).

Kaitlyn Moore, who only knew Bixler for nine days, and first met him when she was soliciting him for paid sex. R. 214, Tr. Day 2, Page ID ##2343-2345. She indicated that she paid Bixler for the drugs she purchased from him and initially made enough to keep money she earned from prostitution. R. 214, Tr., Day 2, Page ID ##2273-2276. The proof regarding Moore was virtually identical to the proof regarding Sidney McCarty, an alleged sex trafficking victim who was the subject of dismissed Count 4. McCarty testified that she and Moore posted on Backpage together and would split the money they earned. DE 220, Tr., Day 3, Page ID ##2498-2499. Text messages Moore sent to Bixler revealed that she did not fear him and that she was pursuing an intimate relationship with him. R. 214, Tr., Day 2, Page ID ##2347-2358. She also admitted she was injecting heroin prior to meeting Bixler. *Id.* at 2359.

The United States reliance on alleged drug distribution to the alleged victims to constitute force under 18 U.S.C. § 1591(b)(1) violates the Fifth Amendment to the United States Constitution. Consequently, this Court should grant certiorari, determine that such an application of 18 U.S.C. § 1591(b)(1) violates the Fifth Amendment to the United States Constitution and vacate Bixler's conviction.

### **III. IMPERMISSIBLE DOUBLE COUNTING.**

Application of USSG § 2A3.1(b)(1) to increase the base offense level by four levels for use of force in sentencing Bixler constituted impermissible double counting of his alleged criminal conduct. Application Note 2(a) to USSG § 2A3.1(b)(1) lists the type of conduct considered to be conduct described in 18 U.S.C. § 2241(a) or (b) as “(A) using force against the victim; (B) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; (C) rendering the victim unconscious; or (D) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.” First, there was no evidence presented at trial that Bixler specifically engaged in any of the activities described to cause Victim A to engage in a commercial sex act. Second, a portion of the conduct described is encompassed by 18 U.S.C. § 1591(b)(1) and is thus already considered in the base offense level. Thus, application of USSG § 2A3.1(b)(1) to increase the base offense level by four levels constituted impermissible double counting.

Application of a vulnerable victim enhancement pursuant to USSG § 3A1.1(b)(1) also constituted impermissible double counting. The fact that each of the alleged sex trafficking victims was addicted to heroin is considered by 18 U.S.C. § 1591(b)(1) and is thus already encompassed in the base offense level since “coercion” is one of the elements of the statutory offense and is considered in the base offense level. Consequently, application of USSG § 3A1.1(b)(1) would result in impermissible double counting.

This Court should grant certiorari to address application of impermissible double counting in imposing sentence under the United States Sentencing Guidelines.



## CONCLUSION

This Court should grant certiorari and determine that the District Court's and Sixth Circuit Court of Appeals' interpretation and application of 18 U.S.C. § 1591(b)(1), Federal Rule of Evidence 412, and the United States Sentencing violated Bixler's rights under the Fifth and/or Sixth Amendments to the United States Constitution. Moreover, unconstitutional application of 18 U.S.C. § 1591(b)(1), Federal Rule of Evidence 412, and the United States Sentencing Guidelines will continue to occur unless certiorari is granted, and this Court addresses those issues. Consequently, the Court should grant certiorari and either vacate Bixler's conviction, reverse Bixler's conviction and order that Bixler be granted a new trial, or order that the case be remanded to the District Court for resentencing.

Respectfully submitted,

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