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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (JANUARY 27, 2022)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PRINCE BIXLER,

Defendant-Appellant.

No. 21-5194

On Appeal from the United States District Court for the Eastern District of Kentucky

Before: SUTTON, Chief Judge; GUY and DONALD, Circuit Judges.

OPINION

BERNICE BOUIE DONALD, Circuit Judge. Following a seven-day trial, a jury found Defendant Appellant Prince Bixler guilty of sex trafficking, drug trafficking, witness tampering, and possessing firearms as a felon. On appeal, Bixler raises a plethora of challenges to his sex trafficking and witness tampering convictions, sentencing enhancements, and order of restitution. For the following reasons, we affirm.

I.

From 2013 to 2018, Bixler operated a prostitution ring in Lexington, Kentucky. Bixler found and recruited destitute women with pre-existing drug addictions to prostitute themselves for his financial benefit. He lured them in with promises of free shelter, food, and drugs, and once they became entirely dependent on him, Bixler demanded they work as prostitutes to pay off their "accumulated debts." Bixler manipulated their drug addictions, controlled their drug supply, and used intimidation and violence to ensure that the women complied.

Following a lengthy investigation, Bixler was arrested on March 28, 2018. The government subpoenaed several women, including Adrienne Ratliff and Amie Payton, to appear before a grand jury. Bixler's history with Ratliff and Payton was representative of how he treated his other victims: he initially provided them with "free" shelter and drugs, but quickly turned violent and abusive. Bixler incessantly called Ratliff and Payton in the days leading up to their testimony. He guilted Ratliff for betraying him and hurting him, stating "Oh, but you told them you'd testify against me[.] . . . Do you know how bad that fucking hurt me?"; "You know, I have kids too."; and "[Y]ou don't even have a conscience, do you? . . . [I]t's just so fucked up that you don't even have a conscience man. . . . Because I keep sitting here thinking about, you know, God damn, does she even have a conscience about the shit that she just done." Ratliff repeatedly lied to Bixler and said she would not testify for fear that he would "yell at [her] and just go off until he got what he wanted out of [her]." Despite Bixler's pleas, Ratliff testified against him before the grand jury.

In addition, Bixler instructed Payton not to talk to a court-appointed attorney and "just tell the truth." Bixler also called Payton over thirty times the day before her scheduled grand jury appearance. The next morning, Payton injected heroin before arriving at the courthouse and refused to testify. Payton stated, "I was afraid to [talk]" and "I didn't want Prince to be mad at me either." She also stated that she would rather go to jail for six months than testify against Bixler. The court subsequently appointed her counsel, and she returned the following month to testify against Bixler before the grand jury.

On September 19, 2019, the grand jury charged Bixler with four counts of sex trafficking, two counts of witness tampering, one count of using facilities in interstate commerce to manage the trafficking scheme, six counts of drug distribution, and three related firearms offenses. The matter proceeded to a jury trial in September 2020. At trial, the government presented testimony from three sex trafficking victims.[1]

The first victim to testify, Kaitlyn Moore, recalled meeting Bixler while homeless and unemployed. Moore had been living with her boyfriend until he overdosed and went to jail. She then moved into a rehabilitation facility but subsequently relapsed and absconded from the facility. Moore eventually found herself homeless, without any personal belongings, and shoplifting to afford her drug habit.

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[1] The government also presented testimony from a fourth alleged victim. However, at the close of the government's case in chief, the district court found insufficient evidence of sex trafficking as to the fourth victim and granted in part Bixler's motion for judgment of acquittal.

Shortly thereafter, Moore met Bixler at a hotel and received free heroin from him. That same night, Bixler suggested Moore could make money through Backpage.com—a website commonly used for prostitution. Bixler told her how to set up an account, paid for the user fees, and helped her solicit clients. Bixler also purchased a hotel room for her dates. Moore testified that, in the beginning, she made "easily a thousand dollars" a day and continued receiving free heroin from Bixler.

Eventually, however, Bixler told Moore that she owed a significant debt for her living expenses, the hotel, and the drugs. Moore testified that she felt obligated to repay the debt by prostituting herself. She stated, "Over time, I started to feel like it really wasn't, like, so much a choice as where kind of I had to do it for fear. But I didn't want to struggle, and I didn't want to have nothing, and it was no longer an option at one point in time. Like, I didn't—I had to do it." She also stated that "once [she] started to do more dope, [she] would need more dope to not be sick, and that cost money too." Moore further testified that Bixler regularly carried guns and was prone to violence. According to Moore, she once "got smacked" for letting one of the other women into her hotel room. Moore testified that she feared Bixler and felt like she could not leave.

The second victim to testify, Savannah Godown, recalled having a romantic relationship with Bixler. For the first few months, Bixler was "great" to Godown. He supplied her with free crack cocaine daily and provided her with several free apartments. Eventually, however, Bixler turned violent. Godown testified that Bixler hit her "weekly," and that he once

"beat [her] with an air mattress pump," and kicked a door in and chipped her tooth.

Shortly thereafter, Bixler moved Godown into a hotel room and she became involved with Backpage.com. Bixler imposed a strict set of rules for Godown; he controlled the information she posted in her ads, the nature of her clientele, and when she could leave the hotel rooms. If Godown disobeyed the rules, Bixler would "beat [her] up for it." Bixler also deputized Godown to help run the operation. Bixler would instruct Godown to "work the phone," pay for the other women's hotel rooms, and collect their profits to give to Bixler. If Godown did not comply, Bixler would again "put his hands on [her]." After approximately four years, Godown grew "tired of being beat on" and left.

The third victim to testify, Savannah Evans, told a similar story to Moore. Like Moore, Evans met Bixler while homeless and addicted to heroin. Evans testified that Bixler moved her into his house and began fronting her heroin. Eventually, she began prostituting herself through Backpage.com to repay her debt. Bixler and his girlfriend, Crystal Rowe, controlled Evans' account; they took photographs of her, posted ads for her services, and paid for the advertisement fees. Bixler even drove Evans to outcalls, or calls at the client's location instead of at the hotel. After she finished a date, Evans gave all the money she earned to Bixler, who provided her with food, shelter, and drugs.

Evans stayed at Bixler's house full time, leaving only for calls. Evans testified that she feared Bixler and felt like she could not leave. Bixler controlled not only her Backpage.com account, but also her heroin

supply. He initially provided her heroin on a daily basis, but Evans eventually had to beg Bixler for heroin. Evans testified that the erratic intake caused withdrawal symptoms. According to Evans, heroin withdraw is "like the flu. . . . Diarrhea, and your body hurts, it aches. You feel really anxious and scared and worried about where you're going to get more from." Evans stated that those symptoms would subside immediately after using heroin. Evans also testified that Bixler hit her on three separate occasions when she tried to leave, and that she saw Bixler hit at least four other women as well.

After hearing this and other evidence, the jury found Bixler guilty of sex trafficking, drug trafficking, witness tampering, and the related offenses. The district court subsequently sentenced him to 432 months' imprisonment and ordered him to pay $333,270 in restitution to Moore, Godown, and Evans. This appeal followed.

II.

Bixler first challenges the district court's grant of the government's pre-trial motion to preclude evidence of his alleged victims engaging in prostitution both before and after their involvement with him.

In "criminal proceeding[s] involving alleged sexual misconduct," Federal Rule of Evidence 412 bars any evidence "offered to prove that a victim engaged in other sexual behavior." Fed. R. Evid. 412(a)(1). However, "not all evidence implicating a victim's past sexual activity falls within Rule 412(a)." *United States v. Kettles*, 970 F.3d 637, 642 (6th Cir. 2020). Rule 412 does not prohibit "evidence whose exclusion would violate the defendant's constitutional rights." Fed. R.

Evid. 412(b)(1)(C). Bixler seizes upon this exception and argues that prohibiting evidence of his alleged victims' past sexual behavior violated his Sixth and Fifth Amendment rights.

First, Bixler contends that the district court violated his Sixth Amendment confrontation rights by curtailing relevant cross-examination testimony from which the jury could have assessed the women's biases or motives to testify. Bixler asserts that the women may have testified against Bixler in exchange for not being prosecuted for prior acts of prostitution. This argument lacks merit.

The Sixth Amendment guarantees criminal defendants the right "to be confronted with the witnesses against him." U.S. Const. amend. VI; *Boggs v. Collins*, 226 F.3d 728, 736 (6th Cir. 2000). "The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974). However, the Confrontation Clause requires only "an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Boggs*, 226 F.3d at 736. Thus, trial judges retain broad discretion to impose reasonable limits on cross-examination. *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). When a trial court limits cross-examination pertaining to a witness's motive, bias, or prejudice, we must decide "whether the jury was otherwise in possession of sufficient information concerning formative events to make a discriminating appraisal of a witness' motives and bias." *United States v. Fields*, 763 F.3d 443, 464 (6th Cir. 2014) (citation omitted).

The district court here permitted Bixler to elicit evidence of the women's criminal histories and their involvement with the underlying investigation. For example, Moore testified that she twice avoided arrest on outstanding warrants—once at the time of Bixler's arrest and once a year later with the help of the same investigating detective. Godown similarly testified that the government reduced a felony robbery charge to a misdemeanor shoplifting charge after she spoke with the investigating detective on the underlying case. In addition, all of the women admitted to purchasing, possessing, and using illicit drugs. Therefore, the jury possessed sufficient information concerning the women's motives to testify, which arose from the prospect of potential punishment and not from the nature of their conduct.

Bixler next argues that the district court violated his Fifth Amendment due process rights by precluding evidence that bore directly on the essential element of force or coercion. Bixler asserts that evidence of prior prostitution suggested the women participated in commercial sex acts on their own volition, and not at his behest. This argument is likewise unavailing.

Although "the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense . . . [it] does not require the admission of irrelevant evidence (or other types of evidence whose relevance is outweighed by other important considerations)." *United States v. Beavers*, 756 F.3d 1044, 1052 (7th Cir. 2014) (internal citations omitted). We agree with the great weight of authority from our sister circuits that prior acts of prostitution are irrelevant to sex trafficking charges under § 1591(a). *See, e.g.*, *United States v. Carson*, 870 F.3d 584, 595-

96 (7th Cir. 2017); *United States v. Gemma*, 818 F.3d 23, 34 (1st Cir. 2016); *United States v. Lockhart*, 844 F.3d 501, 510 (5th Cir. 2016); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015); *United States v. Rivera*, 799 F.3d 180, 186 (2d Cir. 2015); *United States v. Valenzuela*, 495 F. App'x 817, 819-20 (9th Cir. 2012).

Prior acts of prostitution lead only to improper character inferences and are not relevant to proving sex trafficking charges under 18 U.S.C. § 1951(a). This evidence had no bearing on whether Bixler forced or coerced them into prostitution on the particular occasions alleged in the indictment. Bixler argues that evidence of prior prostitution would demonstrate the women's propensity to engage in prostitution, which, in turn, would negate their testimony that Bixler forced them into a life of prostitution. However, this is exactly the type of evidence proscribed by Federal Rules of Evidence 412 and 404(b). *See United States v. Givhan*, 740 F. App'x 458, 464 (6th Cir. 2018) (citing *United States v. Mack*, 808 F.3d 1074, 1084 (6th Cir. 2015)) (holding that evidence of prior prostitution is not admissible to prove consensual prostitution on a different occasion).

Furthermore, Bixler cannot show prejudicial error because the parties did, in fact, elicit evidence of prior acts of prostitution, notwithstanding the district court's order. Bixler testified that he met Moore through Backpage.com, where he responded to her advertisement for sex. Godown likewise testified that she worked on Backpage.com before meeting Bixler. In addition, Evans testified that she occasionally posted advertisements for sex independent of Bixler.

Accordingly, Bixler cannot demonstrate that the district court committed any error, let alone prejudicial error, in granting the government's motion in limine.

III.

Second, Bixler challenges the district court's denial of his pre-trial motion to preclude the testimony of addiction specialist Dr. Kelly Clark.

Federal Rule of Evidence 702 requires expert testimony to be both reliable and helpful for "the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a)-(d). Bixler challenges both requirements. He argues that Clark could not provide reliable testimony because she never examined the victims in this case. He also argues that Clark did not testify on matters "beyond the ken of the average juror," and thus "invaded the province of the jury" in determining the ultimate issue at trial—whether Bixler coerced the victims to engage in commercial sex acts. Appellant Br. 21-22. We review the district court's admission of expert testimony for an abuse of discretion. *United States v. Amawi*, 695 F.3d 457, 478 (6th Cir. 2012).

At trial, Clark testified about the physical and psychological impacts of drug dependency, addiction, and withdrawal. Clark differentiated between physical dependency as the body's adjustment to the presence of drugs, and drug addiction as a "chronic brain disease" that affects the user's impulse control and judgment. Trial R. 216, Page ID#: 2940, 2943. She explained that withdrawal results from the body's readjustment to the absence of drugs. She described withdrawal as "very, very painful," and listed common symptoms as nausea, diarrhea, sweating, shaking,

and drooling. *Id.* at Page ID#: 2943. She stated that "people can't function when their bodies" go through withdrawal. *Id.* Clark noted that anyone can become dependent on drugs and experience withdrawal, but only those addicted to drugs lose control when the drugs are withheld. According to Clark, those struggling with addiction initially reuse drugs to "chas[e] feeling good," but, as the addiction cycle continues, they reuse drugs to escape the sickness that comes from withdrawal. *Id.* at Page ID#: 2950.

This kind of testimony does not require review of case-specific facts. *See* Fed. R. Evid. 702 advisory committee's note ("[I]t might . . . be important in some cases for an expert to educate the factfinder about general principles, without ever attempting to apply these principles to the specific facts of the case."). Instead, Clark's testimony helped the jury contextualize the women's vulnerabilities and understand the power Bixler held over them—subjects that likely are beyond an ordinary juror's knowledge or experience. *See* Patrick Eoghan Murray, *In Need of a Fix: Reforming Criminal Law in Light of a Contemporary Understanding of Drug Addiction*, 60 UCLA L. Rev. 1006, 1025 (2013) ("For a judge or jury to get inside the mind of a drug addict requires understanding th[e] mysterious and self-destructive compulsion [to consume drugs] that has no analog for nonaddicts."). Accordingly, the district court did not abuse its discretion by allowing Dr. Clark to testify as an expert regarding drug dependency and addiction.

IV.

Third, Bixler contends that the government violated his equal protection rights by using a peremptory challenge to strike the only black member of the venire.

The Equal Protection Clause prohibits a party from using peremptory challenges to exclude members of the venire on account of their race. *See Batson v. Kentucky*, 476 U.S. 79 (1986). In evaluating a *Batson* challenge, the district court must follow a three-step process. *Purkett v. Elem*, 514 U.S. 765, 768 (1995). First, the court must determine if the opponent of the peremptory challenge has made out a prima facie case of racial discrimination (step 1). Second, if the opponent establishes a prima facie case, the court must then determine if the proponent has presented a race-neutral explanation (step 2). Third, if the proponent tenders a race-neutral explanation, the court must ultimately decide whether the opponent has proved purposeful discrimination (step 3). *Id.* Notably, "the ultimate burden of persuasion . . . rests with, and never shifts from, the opponent of the strike." *Id.*

Step 1. A party's use of a peremptory challenge to strike the only prospective black juror is "more than sufficient to establish a prima facie case of intentional discrimination." *United States v. Mahan*, 190 F.3d 416, 425 (6th Cir. 1999). Bixler averred, and the government did not dispute, that the stricken juror, Juror 23, was the sole black juror on the panel. Thus, we must move to step 2.

Step 2. The proponent's explanation "need not be particularly persuasive, or even plausible, so long as it is neutral." *United States v. Harris*, 192 F.3d 580, 586 (6th Cir. 1999). An explanation is "neutral" if it

is based on something other than the race of the juror. *Hernandez v. New York*, 500 U.S. 352, 360 (1991). Here, the government argues that the peremptory strike was based on Juror 23's acquaintance with Bixler, namely, that her family or friends knew Bixler. Finding that the government met its burden, we turn now to step 3. *See United States v. Lawrence*, 735 F.3d 385, 444 (6th Cir. 2013) (finding that a juror's familial connection to the defendant "is facially reasonable and does not suggest discriminatory intent").

Step 3. When the proponent presents a neutral explanation, "the question . . . boils down to whether [the opponent] established by a preponderance of the evidence that the peremptory strikes were intentionally discriminatory." *United States v. Tucker*, 90 F.3d 1135, 1142 (6th Cir. 1996). The district court's decision on the ultimate question of discriminatory intent is a finding of fact entitled to "great deference on appeal." *Hernandez*, 500 U.S. at 364. We accordingly review for clear error. *Tucker*, 90 F.3d at 1142.

In this case, the district court found no discriminatory intent. The court noted that Juror 23 was the only juror who "had heard of Prince Bixler," and that she gave conflicting information "on how she heard." Juror 23 initially indicated that, three or four years prior, she heard a family member mention "Prince Bixler" in passing. Juror 23 later indicated that she heard his name through a mutual family friend, not a family member, and named the specific friend on the record. In addition, Juror 23 was the only juror with prior knowledge of Backpage.com. Under these circumstances, we cannot find that the district court clearly erred in overruling Bixler's *Batson* challenge.

V.

Fourth, Bixler argues that the district court erred in denying his motion for a continuance based on news coverage of a local rally against sex trafficking to occur later that same day.

Trial courts retain broad discretion on matters of continuances. *Morris v. Slappy*, 461 U.S. 1, 11-12 (1982). An abuse of discretion occurs only when the court unreasonably and arbitrarily "'insist[s] upon expeditiousness in the face of a justifiable request for delay.'" *Id.* (quoting *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964)). "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." *United States v. Wirsing*, 719 F.2d 859, 866 (6th Cir. 1983) (citation omitted). We also look to whether the defendant suffered any prejudice as a result of the denial. *Id.*; *United States v. Martin*, 740 F.2d 1352, 1360 (6th Cir. 1984).

Minutes before the start of voir dire, Bixler moved to continue his trial for an unspecified period of time to avoid any potential prejudice from a local rally against "either human trafficking or sex trafficking" scheduled for later that same day. Trial R. 213, Page ID#: 1904. Bixler worried that prospective jurors "may have heard reports" on the news that morning, and selected jurors could hear about it on the news that night. *Id.* He argued that the rally attendees would be protesting the same conduct of which he was accused, and thus, publicity of the rally could prejudicially pervade the courtroom and impact his ability to have a fair trial. The district court denied

the motion, assuring the parties that it would "carefully voir dire" the jury pool of any predispositions and warn the selected jury "to avoid any news concerning th[e] case, and . . . the subject matter of the case."

During voir dire, the court inquired whether the prospective jurors had any knowledge of the case or any preconceived opinions as to Bixler's guilt. None of the jurors indicted any knowledge of the case. Instead, all the jurors expressed their willingness to decide the charges against Bixler solely on the evidence presented at trial and to presume Bixler's innocence unless proven guilty. Defense counsel specifically inquired whether the prospective jurors had seen any news stories or accounts about commercial sex trafficking. None of the jurors answered affirmatively, and neither party challenged any juror for cause on that basis. Throughout the trial, the district court properly admonished the jury to avoid reading, watching, or listening to any coverage of the case, and required any juror inadvertently exposed to such information to convey that fact to the court. Under these circumstances, we cannot find that the unbeknownst sex trafficking rally prejudicially affected the juror pool.

Accordingly, the district court did not abuse its discretion in denying Bixler's motion for a continuance.

VI.

Fifth, Bixler challenges the sufficiency of the evidence supporting his convictions for sex trafficking and witness tampering. Where, as here, a defendant properly preserves his claims of insufficient evidence, we review those claims *de novo*. *United States v. Mack*, 808 F.3d 1074, 1080 (6th Cir. 2015). In evaluating

the claims, we must ask "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We must "draw all available inferences and resolve all issues of credibility in favor of the jury's verdict." *United States v. Conatser*, 514 F.3d 508, 519 (6th Cir. 2008) (citation omitted).

A.

To support a conviction for sex trafficking under 18 U.S.C. § 1591(a)(1), the government must prove that Bixler (1) recruited, enticed, harbored, transported, provided, obtained, or maintained a person; (2) knowing that force, threats of force, coercion, or any combination of such means would be used; (3) to cause the person to engage in a commercial sex act. Bixler challenges only the second element, arguing that the government failed to present sufficient evidence of "force" or "coercion."

"Coercion" includes "threats of serious harm" and a "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." 18 U.S.C. § 1591(e)(2)(A)-(B). "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.

18 U.S.C. § 1591(e)(5). It can include physical and psychological harm incurred from severe drug withdrawal. *See Mack*, 808 F.3d at 1081-83.

In *Mack*, the defendant targeted women with pre-existing drug addictions and used those addictions to coerce them into prostitution. *Id.* at 1082. The defendant initially supplied "free" drugs to the women, which in turn exacerbated their addictions and resulted in a high, fictitious drug debt. *Id.* at 1081-82. When he abruptly cut them off and demanded payment, the women felt compelled to engage in commercial sex acts "to avoid the physical and psychological harm of heroin and cocaine withdrawal." *Id.* at 1082. One woman testified that "when she did not prostitute herself, she would get sick from lack of heroin. Without it, she would sweat, vomit, shake, and kick her legs uncontrollably." *Id.* Under these circumstances, this court found sufficient evidence of a "coercive and, at times, physically abusive atmosphere in which the victims felt compelled to prostitute themselves." *Id.* at 1081.

Mack is controlling here. Bixler similarly exploited his victims' drug addictions and withdrawal symptoms by carefully controlling their access to drugs. Bixler gave the women presumptively free drugs and enticed them into codependent relationships. Once he gained their complete obedience and loyalty, Bixler demanded the women engage in prostitution for his financial benefit. Bixler took salacious photos of them, posted advertisements on Backpage.com, and set the prices for their services. Bixler psychologically manipulated the women by withholding drugs until after their

dates. He also used intimidation and violence to ensure the women met their daily quotas. He then kept all the money earned; using the profits to repay their fictious debts. Viewing this evidence in the light most favorable to the government, a reasonable jury could have found that Bixler forced, threatened, or coerced the women to engage in prostitution.

Bixler also argues that the district court should have found Evans incompetent to testify and stricken her testimony after she admitted to using heroin on the morning of trial. However, "[a] witness under the influence of drugs is competent to testify unless he or she is so impaired that he or she cannot coherently respond to questioning." *United States v. Frezzell*, 793 F. App'x 133, 136 (3rd Cir. 2019) (quoting 98 C.J.S. Witnesses § 115 (2019)). That was not the case here. The district court determined that Evans "had recollection, she's had narration, she seems to understand the oath, she says she doesn't remember when she doesn't remember." Trial R. 214, Page ID#: 2460-61. The court accordingly concluded that Evans was competent to testify. Thus, Bixler's argument goes to the weight and credibility of her testimony—a question "particularly suited to the jury," not this court. Fed. R. Evid. 601, Advisory Committee Notes; *see United States v. Moreno*, 899 F.2d 465, 469 (6th Cir. 1990).

B.

To support a conviction for witness tampering under 18 U.S.C. § 1512(b)(1), the government must prove that Bixler (1) knowingly intimidated, threatened, or corruptly persuaded; (2) with the intent to influence, delay, or prevent; (3) the testimony of any person in

an official proceeding. Bixler challenges only the first element, arguing that the government failed to present sufficient proof of intimidation, threats, or corrupt persuasion where he told the women to "tell the truth."

We have consistently upheld convictions for witness tampering in the absence of directly threatening language. *See United States v. Carnes*, 309 F.3d 950, 956 (6th Cir. 2002); *United States v. Carson*, 796 F. App'x 238, 251 (6th Cir. 2019). The key inquiry is whether the evidence could have been interpreted as "threatening in nature or intent." *Carnes*, 309 F.3d at 956 (internal quotations and citation omitted). This inquiry recognizes that "otherwise encouraging language can become a threat . . . when issued by a long-time abuser." *Id.* at 957 (internal quotations omitted).

The evidence produced at trial demonstrated that Bixler had a long-standing pattern of threatening and abusing Ratliff and Payton. In the days leading up to their grand jury appearances, Bixler incessantly called and delivered messages to deter them from testifying. For example, Bixler confronted Ratliff and guilted her for betraying him. Bixler also conveyed that, if the roles were reversed, he would "fight with" her rather than testify against her. In particular, Bixler threatened: "No, when I get the fuck in front of you, I'm going to cuss your ass out, I might even slap your God damn brains out. But at the end of the day – I wouldn't tell the motherfucker nothing." Gov't Ex. 12G, 01:43-3:26. Ratliff understood these messages as attempts to pressure or intimidate her into lying to protect him.

Bixler similarly confronted Payton, telling her that the government wanted to "conquer and destroy" him by "fucking [him] with all [his] loved ones [and the people he] takes care of . . . or the people that [he would] do anything for, so once they turn on [him], [he's] sitting in jail with nothing." Gov't Ex. 13A, 00:28-01:07. Based on Bixler's tone and conduct, Payton believed Bixler "was mad at [her]" and did not want her to testify before the grand jury. To avoid angering Bixler, Payton used heroin on her way to the courthouse and refused to talk at the first grand jury. Payton stated that she would rather go to jail for six months than testify against him.

Under these circumstances, the jury could reasonably infer that Bixler attempted to corruptly persuade the women and prevent them from testifying before the grand jury. This is especially true "given the long history of [Bixler's] abusive behavior toward [Ratliff and Payton]." *United States v. Iu*, 917 F.3d 1026, 1032 (8th Cir. 2019).

VII.

Finally, Bixler challenges the application of seven sentencing enhancements and the district court's calculation of restitution. When evaluating the district court's application of the Sentencing Guidelines, we review factual findings for clear error and mixed questions of law and fact *de novo*. *United States v. Tolbert*, 668 F.3d 798, 800 (6th Cir. 2012). "A finding is clearly erroneous where, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Id.*

A.

We will first address Bixler's argument that the record did not adequately support six different sentencing enhancements.

First, Bixler objects to the district court's application of a four-level enhancement for "knowingly caus[ing] another person to engage in a sexual act—by using force against that other person; or by threatening or placing that other person in fear [of] death, serious bodily injury, or kidnapping." 18 U.S.C. § 2241(a); *see* U.S.S.G. § 2A3.1(b)(1). Several women testified at trial that Bixler frequently used violence to ensure they met call quotas. Bixler even admitted that he "put [his] hands on women"; in particular, he testified that he hit Godown and "struck" Evans for stealing money. Therefore, the district court did not err in applying the use of force enhancement.

Second, Bixler objects to the district court's application of U.S.S.G. § 3B1.1(a). Under section 3B1.1(a), the district court must apply a four-level enhancement if the defendant organized or led any criminal activity that involved five or more participants. A review of the record shows that Bixler headed an extensive criminal enterprise that spanned several years and involved at least eight participants whom he deputized to recruit women, create advertisements, arrange hotel rooms, collect profits, and deliver drugs. Therefore, the record amply supported application of the leadership enhancement.

Third, Bixler objects to the district court's application of a two-level enhancement for obstruction of justice. *See* U.S.S.G. § 3C1.1. The district court determined that Bixler's convictions for witness tampering

supported an enhancement for obstructing justice. The court found that Bixler "specifically talked about trafficking with respect to Adrianne Ratliff." These findings were supported by the record.[2]

Fourth, Bixler objects to the district court's application of an eight-level enhancement for threatening to cause physical injury to a person. *See* U.S.S.G. § 2J1.2(b)(1)(B). However, Bixler's argument is belied by a recorded phone call between himself and Ratliff, in which he threatened to "slap [her] God damn brains out." Gov't Ex. 12G, 01:43-3:26.

Fifth, Bixler objects to the district court's drug quantity calculation under U.S.S.G. § 2D1.1(c)(5). Section 2D1.1(c)(5) provides that drug trafficking offenses involving at least one kilogram of heroin require a base offense level of 30. A review of the record shows that Bixler distributed heroin to at least nine people over the course of two years. For instance, Bixler sold Holly Falls thirty grams of heroin; Jessica Martin ten grams of heroin; and Amy Bailey sixty grams of heroin. In addition, Bixler supplied Evans with heroin daily for two and a half years, an approximate total of seven hundred fifty grams, and Caudill with two grams of heroin daily for a couple months. Accordingly, the record sufficiently supported the district court's drug quantity calculation.

Finally, Bixler objects to the district court's application of a two-level enhancement for an offense involving three to seven firearms. *See* U.S.S.G.

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[2] The district court alternatively found that Bixler presented perjurious testimony at trial. However, given our affirmance of the enhancement on other grounds, we need not address Bixler's challenge to this alternative theory of application.

§ 2K2.1(b)(1)(A). However, Bixler admitted that he owned three firearms recovered from his residence and garage. Therefore, the district court did not err in applying the firearm enhancement.

B.

Bixler next argues that the district court impermissibly "double counted" in applying multiple Sentencing Guidelines provisions for the same conduct.

Double counting occurs only "when precisely the same aspect of a defendant's conduct factors into his sentence in two separate ways." *United States v. Farrow*, 198 F.3d 179, 193 (6th Cir. 1999). "[N]o double counting occurs if the defendant is punished for distinct aspects of his conduct." *United States v. Battaglia*, 624 F.3d 348, 351 (6th Cir. 2010). Even where double counting occurs, it is not necessarily impermissible. *Farrow*, 198 F.3d at 194. For instance, "we allow double counting where it appears that Congress or the Sentencing Commission intended to attach multiple penalties to the same conduct." *Id.* (citing *United States v. Johnson*, 22 F.3d 106, 108 (6th Cir. 1994)).

Bixler identifies three alleged instances of double counting. First, he asserts that the district court improperly considered his use of force to determine his base offense level and to apply a four-level enhancement under § 2A3.1(b)(1). U.S.S.G. § 2G1.1(a) provides the base offense level for sex trafficking convictions. However, when the offense involves aggravated sexual abuse or sexual abuse, the cross-reference in U.S.S.G. § 2G1.1(c)(1) provides that the district court should instead apply U.S.S.G. § 2A3.1. Section 2A3 .1(b)(1) provides for a four-level enhancement if the

offense involved the former—aggravated sexual abuse under section 2241(a) or (b). *Id.* at § 2A3.1(b)(1). Based on the plain language of the Guidelines, the Sentencing Commission intended for the entirety of § 2A3.1, including any enhancements, to apply following the application of the cross reference. *See* U.S.S.G. § 1B1.5(a); *United States v. Kizer*, 517 F. App'x 415, 420 (6th Cir. 2013) (finding that "the Sentencing Commission must have intended to punish defendants in this way using both the cross reference and the enhancement."). Therefore, the district court's application of the use of force enhancement did not constitute impermissible double counting.[3]

Second, Bixler asserts that the district court improperly considered the victims' drug addictions both as an element of the offense and to increase the offense level under § 3A1.1(b)(1). Under section 3A1.1 (b)(1), the district court must apply a two-level enhancement "if the defendant knew or should have known that a victim of the offense was a vulnerable victim." A "vulnerable victim" means one "who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct." *Id.* at § 3A1.1 cmt. n.2. The application notes caution that the vulnerable victim enhancement cannot be applied "if the factor that makes a person a vulnerable victim is incorporated in the offense guideline." *Id.* However, the district court recognized this at sentencing and imposed the enhancement based on factors other than the women's drug addictions. For example, the court also considered

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[3] We note that U.S.S.G. § 2G1.1 imposes a base offense level of 34 for convictions under 18 U.S.C. § 1591(b)(1), and thus, any perceived error would be harmless.

their criminal histories and economic dependency on Bixler. Therefore, the district court's application of the vulnerable victim enhancement did not constitute impermissible double counting.

Third, Bixler asserts that the district court improperly considered his attempts to influence grand jury testimony both as an element of the offenses and to increase the offense level under § 3C1.1. However, this argument is expressly foreclosed by the application notes. The application notes allow the obstruction of justice enhancement to apply "where there is a separate count of conviction for such conduct." U.S.S.G. § 3C1.1 cmt. n.4; *see United States v. Pego*, 567 F. App'x 323, 330 (6th Cir. 2014). Therefore, the district court's application of the obstruction of justice enhancement also did not constitute impermissible double counting.

C.

Finally, Bixler contends that the district court erred in calculating the amount of restitution owed to Moore, Godown, and Evans. The Trafficking Victims Protection Act ("TVPA") directs district courts to order restitution for any sex trafficking offense. *See* 18 U.S.C. § 1593(a). Section 1593(b) requires the defendant to pay the victim "the full amount of the victim's losses," including "the gross income or value to the defendant of the victim's services or labor."

Bixler argues that the government did not present sufficiently reliable proof of the women's incomes, and that the court merely estimated the amount. However, the amount of restitution need not "be proven with exactitude." *In re Sealed Case*, 702 F.3d 59, 66 (D.C. Cir. 2012). Determining the dollar amount of a victim's losses "will often be difficult" and "such

a determination will inevitably involve some degree of approximation[.]" *Id.* (citation omitted). Thus, estimates are permitted as long as there exists some reasonable and reliable evidence of the victims' losses. *United States v. Williams*, 5 F.4th 1295, 1305 (11th Cir. 2021).

Relying on the women's trial testimony, the district court multiplied their self-reported daily earnings by the approximate number of days worked. The court found that Moore earned approximately $1,000 per day for four days, totaling a gross income of $4,000. It also estimated that Godown earned approximately $300 per day for 782 days, totaling a gross income of $234,642. It further determined that Evans earned approximately $160 per day for 591 days, totaling a gross income of $94,628. During its calculations, the court reduced the number of days worked to account for sick days and ensure a conservative estimate. We find these estimates sufficiently reasonable and reliable for purposes of the TVPA.

Bixler next asserts that the court should have offset the claimed amount by the value of the items supplied to the women, including food and lodging. However, this argument disregards the plain language of the TVPA. Section 1593(b) provides that trafficking victims shall recover "the gross income or value [of their services]." "Gross income" is the "[t]otal income from all sources *before* deductions, exemptions, or other tax reductions." Black's Law Dictionary 710, 767 (7th ed. 1999) (emphasis added). Therefore, "the court was not required—or even permitted—to offset the restitution . . . by the amount [Bixler] expended on his victims' living expenses." *Williams*, 5 F.4th at 1305.

Accordingly, the district court did not err in calculating the amount of restitution owed under the TVPA.

VIII.

For the foregoing reasons, we AFFIRM Bixler's convictions, sentence, and restitution owed.

JUDGMENT IN A CRIMINAL CASE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (FEBRUARY 25, 2021)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

_____

UNITED STATES OF AMERICA

v.

PRINCE BERNARD BIXLER

_____

Case Number. 5:18-CR-068-SS-REW-01

USM Number: 22651-032

Before: Hon. Robert E. WIER,
United States District Judge.

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

☒ was found guilty on count(s) after a plea of not guilty 1-3, 5-16 [DE 32] Second Superseding Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
18:1591(a)(1)	Sex Trafficking	March	1-3

		2018	
18:1512(b)(1)	Tampering with a Witness	November 14, 2018	5-6
18:1952(a)(3)(A)	Use of a Communication Device to Promote Prostitution	March 28, 2018	7
21:841(a)(1)	Distribution of a Mixture or Substance Containing Heroin	March 20, 2018	8, 14-15
21:841(a)(1)	Distribution of a Mixture or Substance Containing Methamphetamine	March 28, 2018	9
21:841(a)(1)	Distribution of a Mixture or Substance Containing Cocaine Base	March 28, 2018	10-11

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.

☒ Count(s) in Indictment [DE 1] and Superseding Indictment [DE 7] are dismissed on the motion of the United States.

(Count 4 of the Second Superseding Indictment disposed of at trial [DE 151].)

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.

February 24, 2021
Date of Imposition of Judgment

/s/ Robert E. Wier
Signature of Judge

Hon. Robert E. Wier, U.S. District Judge
Name and Title of Judge

2.25.2021
Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
18:922(g)(1)	Felon in Possession of Firearms	March 28, 2016	12-13, 16

IMPRISONMENT

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

FOUR HUNDRED THIRTY-TWO (432) MONTHS on each of Counts 1, 2, and 3; TWO HUNDRED FORTY (240) MONTHS on each of Counts 5 and 6; SIXTY (60) MONTHS on Count 7; THREE HUNDRED SIXTY (360) MONTHS on each of Counts 8, 9, 10, 11, 14, and 15; and ONE HUNDRED TWENTY (120) MONTHS on each of Counts 12, 13, and 16; all such terms to be served concurrently, for a total term of FOUR HUNDRED THIRTY-TWO (432) MONTHS

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

That the defendant participate in appropriate educational and vocational training programs.

That the defendant receive appropriate medical, mental, and emotional health evaluations and applicable treatment.

That the defendant be designated to an appropriate facility closest to his home in Lexington, Kentucky.

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

SUPERVISED RELEASE

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

TEN (10) YEARS on each of Counts 1, 2, and 3; THREE (3) YEARS on each of Counts 5, 6, and 7; SIX (6) YEARS on each of Counts 8, 9, 10, 11, 14, and 15; and THREE (3) YEARS on each of Counts 12, 13, and 16; all

such terms to be served concurrently, for a total supervision term of TEN (10) YEARS

STATUTORILY MANDATED CONDITIONS

1. You must not commit another federal, state, or local crime.

2. You must not unlawfully possess or use a controlled substance.

3. You must submit to a drug test within 15 days of supervsision commencement. USP shall subsequently test Defendant at least twice thereafter and may test Defendant as frequently as biweekly during the supervision term. USPO may seek Court permission for more frequent testing, if warranted. USPO may re-test if any test sample is invalid.

4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

5. ☒ You must cooperate in the collection of DNA as directed by the probation officer.

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

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 based on age or inability to work. 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 arc 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 lasers).

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.

SPECIAL CONDITIONS OF SUPERVISION

1. You shall refrain from the use of alcohol.

2. You must submit your person, house, residence, office, vehicle, papers, computers (as defined in 18 U.S.C. 1030(e)(l)), and other electronic communications/data storage devices and media to a search conducted by a United States Probation Officer, who may conduct a search pursuant to this condition only when he or she has reasonable suspicion that you have violated one or more conditions of your supervised release and that the area(s) or thing(s) to be searched contain evidence of the suspected violation(s). The USPO must conduct any such search at a reasonable time and in a reasonable manner. Failure to submit to such a search would be a violation of your supervised release and may be grounds for revocation. You must inform other occupant(s) of any area potentially subject to such a search of that status. The search right encompasses and extends also to Defendant's phones and social media accounts.

3. You must refrain from having intentional or volitional contact, either directly or indirectly, with any victim, government witness identified in Docket Entry 153, or any law enforcement officer associated with prosecuting the case.

CRIMINAL MONETARY PENALTIES

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

	TOTALS
Assessment	$ 1,500.00 ($100/Count)
Restitution	$ 333,270.00
Fine	$ Waived
AVAA Assessment*	$ N/A
JVTA Assessment**	$ N/A

☒ 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,

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

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

pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	**Total Loss*** **	**Restitution Ordered**
Savannah Godown Lexington, KY	$ 234,642.00	$ 234,642.00
Savannah Evans Unknown Address	$ 94,628.00	$ 94,628.00
Kaitlyn Moore Lexington, KY	$ 4,000.00	$ 4,000.00
TOTALS	$ 333,270.00	$ 333,270.00

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of $334,770.00 due immediately, balance due

☒ in accordance with F below; or

F. Special instructions regarding the payment of criminal monetary penalties:

*** Findings for the total amount of losses are required under Chapters 109A, 110, 11OA, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Criminal monetary penalties are payable to:

Clerk, U. S. District Court, Eastern District of Kentucky 101 Barr Street, Room 206, Lexington, KY 40507

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

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, arc made to the clerk of the court. During imprisonment, the defendant shall pay, through the Inmate Financial Responsibility Program, 50% of all earnings over $75 per month. This is no way limits the Government's ability to pursue collections immediately. If and when released, the Court will assess, via the USPO, and impose a proper schedule on the remaining balance of any amount owed.

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

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

The preliminary forfeiture order shall now become final as to the property identified in that order. DE 165.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6)

fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY ON MOTIONS IN LIMINE (AUGUST 12, 2020)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION LEXINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

PRINCE BERNARD BIXLER,

Defendant.

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

Before: Robert E. WIER

ORDER

The Court confronts two of the United States's pending motions *in limine*.[1] DE ##70, 72. Broadly,

[1] As a general matter, the Court is reluctant to rule in advance on evidentiary matters unless resolution is clear on the current record. *See, e.g., Bouchard v. Am. Home Products Corp.*, 213 F. Supp. 2d 802, 810 (N.D. Ohio 2002) ("The court has the power to exclude evidence in limine only when evidence is clearly inadmissible on all potential grounds.") (citing *Luce v. United States*, 105 S. Ct. 460, 463 (1984)); *Luce*, 105 S. Ct. at 463 ("A reviewing court is handicapped in any effort to rule on subtle

the Government seeks to limit defense introduction of two classes of proof: (1) potential impeachment evidence related to fellow officer opinions of or information about Lexington Police Detective Todd Hart; and (2) evidence concerning the alleged victims' purported engagement in commercial sex work prior or subsequent to the events of this case. Defendant Prince Bixler opposes both exclusion motions and additionally, in response to the latter, moves to introduce evidence of the alleged victims' sexual behavior under Rule 412(c).[2] DE ##76, 77. The Court analyzes each class of proof in turn.

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evidentiary questions outside a factual context."); *Gresh v. Waste Servs. of Am., Inc.*, 738 F. Supp. 2d 702, 706 (E.D. Ky. 2010) (generally remarking that "rulings [on evidentiary matters] should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context"); *United Propane Gas, Inc. v. Pincelli & Assocs., Inc.*, No. 5:13-CV-190-TBR, 2018 WL 6533341, at *1 (W.D. Ky. Dec. 12, 2018) ("Motions in limine provided in advance of trial are appropriate if they eliminate evidence that has no legitimate use at trial for any purpose.") (emphasis added). The Court will monitor the evidence at trial and issue its rulings in accordance with the law, mindful of Bixler's constitutional right to a complete defense. *See United States v. Smead*, 317 F. App'x 457, 462 (6th Cir. 2008) ("The United States Constitution guarantees criminal defendants 'a meaningful opportunity' to present a complete defense.") (citations omitted).

[2] Bixler's imbedded reference to Rule 412(c) was a pass at compliance with the mechanics of the Rule. Suffice it to say, the Court would need more detail (and a hearing) if it intended to admit evidence of "other sexual behavior" of the victims, and the Court would significantly ramp up the process. This ruling obviates need for such a step.

1. Relevant Background

The operative 16-count Second Superseding Indictment charges Defendant with: four counts of forcing others to engage in commercial sex acts in violation of 18 U.S.C. §§ 1591(a)(1) and (b)(1) (Counts 1-4, as to Victims A-D); two counts of witness intimidation in violation of 18 U.S.C. § 1512(b)(1) (Counts 5 and 6, as to Witnesses A and B); use of a facility of interstate commerce to facilitate prostitution in violation of 18 U.S.C. § 1952 (Count 7); three counts related to heroin distribution in violation of 21 U.S.C. § 841 (Counts 8, 14, and 15); methamphetamine distribution in violation of § 841 (Count 9); two counts of crack cocaine distribution in violation of § 841 (Counts 10 and 11); and three counts of possessing a firearm as a convicted felon in violation of 18 U.S.C. § 922(g) (Counts 12, 13, and 16). DE #32. Bixler pleaded not guilty to all charges in September 2019. DE #35. After several hearings concerning former defense counsel's continued representation of Bixler, the Court permitted counsel to withdraw in March 2020 and appointed Bixler's current attorney, Hon. John Kevin West, as replacement counsel. DE #64. Trial is currently set to commence on August 31, 2020, in Frankfort. DE #80.

2. Motion to Exclude Impeachment Evidence (DE #70)

The Government alleges that Defendant distributed various illegal drugs, during the distinct time periods outlined in the Second Superseding Indictment, to (among others) the alleged victims in this case. Per the prosecution's case theory, Bixler took advantage of the victims' substance dependencies, maintaining a

level of control over them and coercing them to engage in commercial sex acts in exchange for drugs. Detective Todd Hart participated in the investigation into Bixler's conduct, assisting federal authorities by organizing undercover controlled purchases and interviewing witnesses, including the alleged victims. As the Government notes, Defendant has (at times, in open Court before the undersigned) voiced criticism of Detective Hart's role in the underlying investigation and alleged Hart's personal bias against him.

In February 2020, the Government became aware of an audio recording capturing a conversation between fellow Lexington Police Detectives Reid Bowles and Steve McCown, in which Detective Bowles "made several derogatory statements about Detective Hart and referred to Detective Hart as being unethical." DE #70 at 4.[3] It promptly provided the audio recording, together with a clarifying memorandum authored by Detective Bowles, to the defense. Per the United States, Detective Bowles's statements "were not based upon any underlying misconduct by Detective Hart[,]" and "it is anticipated Detective Bowles will testify that he made these statements out of frustration" with Detective Hart's work quality. *Id.* at 5.

The Court ordered the United States to put the tape excerpt and the memo in the record, and the Government complied. DE ##85 (Order), 89 (Audio Recording), 92 (Clarifying Memo). The Court has reviewed those materials. The conversation occurred on April 22, 2019. See DE #92. Detective Bowles undoubtedly has views regarding Hart and his relative

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[3] Per the Government, Detective Bowles's comments were not related to *this* investigation.

laxity in terms of investigative ethics. The Government asks the Court to preclude any defense attempt to elicit information concerning Detective Bowles's statements about Detective Hart and, more generally, to exclude any reference to "unfounded allegations of prior wrongdoing by Detective Hart[.]" *Id.* at 4. The Government primarily asserts that the information is not relevant under Rule 401, is alternatively (even if minimally relevant) unduly prejudicial under Rule 403, and would constitute improper impeachment evidence under Rule 608. Defendant counters that Detective Bowles's statements, as well as Detective Hart's own comments and conduct during this investigation, are probative of Hart's credibility and potential bias against Bixler.

Per the Rules, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. Relevant evidence is admissible, unless the Rules or other specified authority provides otherwise. Fed. R. Evid. 402. Issues pertaining to a witness's credibility are always relevant. *See, e.g.*, *United States v. Vandetti*, 623 F.2d 1144, 1150 (6th Cir. 1980). Though he does not cite a specific Rule, Bixler essentially argues that the comments from Bowles are relevant impeachment evidence because they reflect negatively on Hart's investigative way and could impact jury assessment of his credibility. Rule 608(a) permits a party to attack a witness's credibility through "testimony about the witness's reputation for having a character for . . . untruthfulness, or by testimony in the form of an opinion about that character." Fed. R. Evid. 608(a). Additionally, though

"extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness," the Rule permits the Court to, "on cross-examination, allow them to be inquired into if they are probative of the [witness's] character for truthfulness or untruthfulness[.]" Fed. R. Evid. 608(b).

The Government argues that Bowles's statements (and any testimony he could offer about Hart's character for truthfulness) are mere conclusory observations, without factual support, and thus inadmissible either as character evidence or as evidence of specific instances of misconduct under Rule 608(a) or (b). *Cf. United States v. Dotson*, 799 F.2d 189, 193 (5th Cir. 1986) ("Unless . . . [an] opinion is rationally based on the perception of the witness and would be helpful to the jury in determining the fact of credibility, it should not become a part of the proof in the case."). The United States contends that, because Bowles's comments about and opinion (at the time, at least) of Hart were not based on any specific instances of misconduct documented in Hart's personnel file, they lack sufficient factual or personal knowledge bases for evidentiary admission.[4] The Government further argues that Detective Bowles likely would explain that he made the recorded "statements out of frustration" with "Detective Hart's quality of work." DE #70 at 5.

Additionally, as the Government recognizes, exploration of potential witness bias "is always relevant as discrediting the witness and affecting the weight of his testimony." *Davis v. Alaska*, 94 S. Ct. 1105, 1110

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[4] The Government does not seem to argue that Bowles's recorded comments do not relate to Hart's perceived honesty.

(1974) (internal quotation marks and citation omitted). "A successful showing of bias on the part of a witness would have a tendency to make the facts to which he testified less probable in the eyes of the jury than it would be without such testimony." *United States v. Abel*, 105 S. Ct. 465, 468 (1984). The Rules contemplate impeachment via bias evidence. *Id.* at 468-69. "The term 'bias' describes 'the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party.'" *Robinson v. Mills*, 592 F.3d 730, 737 (6th Cir. 2010) (quoting *Abel*, 105 S. Ct. at 469).

This proof category eludes full treatment in the liminal context—there simply are too many questions to permit a concrete resolution pre-trial. A few preliminary rulings and observations, though:

First, if the United States calls Hart, he will be subject to cross-examination like any other witness. Thus, Bixler certainly can examine him about any connections with victims, promises or inducements made to victims, and other items that may suggest a reason a victim (or other witness) may slant testimony. This reflects queries of Hart that could impeach others.

Second, if the United States calls Hart, Bixler may impeach Hart's own testimony. This could include good faith and well-founded inquiries under Rule 608(b). However, the scope of Rule 608(b) is limited—other instances must be "probative of" Hart's "character for untruthfulness." Bixler must be able to demonstrate a foundation for any questions of this type. The Court does not view the Bowles tape—which did not seem to discuss Hart's ethics or honesty relative to any concrete event—as falling within the

Rule. The Rule also allows only inquiries, not extrinsic proof. Further, Bixler may, as a matter of prototypical impeachment, reasonably probe whether Hart has personal bias toward him.

Third, Rule 404(b) would preclude Bixler from attempting to use "evidence of a . . . wrong, or other act . . . to prove [Hart's] character in order to show that on a particular occasion [Hart] acted in accordance with the character." Fed. R. Evid. 404(b). Bixler cannot use alleged misconduct in other cases to show that Hart is a bad cop and thus probably acted improperly in this investigation. The Rule blocks such a construct. Bixler forecasts such an attempt by his captious description of "the manner" or "the way Detective Hart conducts undercover transactions[.]" DE #76 at 3. Such dispositional proof—that prior conduct shows character or propensity for future conduct—threatens just the inference that Rule 404(b) proscribes.

Finally, if Hart does testify,[5] then Bixler could call Bowles as a Rule 608(a) witness. Whether Bowles

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[5] Bixler himself could call Hart. If Hart has personal knowledge relevant to the case (*e.g.*, investigative details, interactions with victims, knowledge of evidence seized), he could be a witness that the Government eschews but Bixler calls. The Court will need to hear more from Bixler on this at trial. The Court would not anticipate allowing Hart to be called just for purposes of facing impeachment. *See, e.g.*, *United States v. Yuill*, 914 F.2d 259 (Table), No. 90-3044, 1990 WL 130484, at *3 (6th Cir. 1990) (citing *United States v. Webster*, 734 F.2d 1191, 1192 (7th Cir.1984)) (observing that "it would be unfair" to call a witness solely to impeach him "in hopes that the jury would treat such evidence as substantive"); *Webster*, 734 F.2d at 1192 (concluding that "it would be an abuse of" Rule 607 for a party "to call a witness that it knew would not give it useful evidence, just so it could introduce hearsay evidence . . . in the hope that the jury

does or does not have an adequate foundation for 608(a) testimony (*i.e.*, for giving his own opinion of or relating Hart's reputation for having a character for untruthfulness) must await the trial. The record does not permit that assessment at this point.[6] *See United States v. Watson*, 669 F.2d 1374, 1382 (11th Cir. 1982) ("The reputation witness must have sufficient acquaintance with the principal witness and his community in order to ensure that the testimony adequately reflects the community's assessment . . . In contrast, opinion testimony is a personal assessment of character . . . the testimony is solely the impeachment witness' own impression of an individual's character for truthfulness . . . Of course, the opinion witness must testify from personal knowledge.") (citation omitted); *United States v. Turning Bear*, 357 F.3d 730, 734 (8th Cir. 2004) (noting that opinion "foundation is laid by demonstrating that the opinion witness knows the relevant witness well enough to have formed an opinion"); *United States v. Bedonie*, 913 F.2d 782, 802 (10th Cir. 1990) (observing that a reputation witness "must show such acquaintance with the [person

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would miss the subtle distinction between impeachment and substantive evidence . . . The purpose would not be to impeach the witness but to put in hearsay as substantive evidence against the defendant, which Rule 607 does not contemplate or authorize.").

[6] And, to take one more flight down the rabbit hole, Bowles theoretically could be questioned (and perhaps impeached) over a prior inconsistent statement, depending on how he testifies. That seems to be the only way the Bowles tape ever could actually make it before the jury. Such cascading conditional circumstances show that this is not the right territory for a definitive pretrial ruling. If no one calls Hart, the Court sees utterly no avenue for proper reference to or use of the Bowles tape.

under attack], the community in which he has lived and the circles in which he has moved, as to speak with authority of the terms in which generally he is regarded") (internal quotation marks omitted). The United States boldly argues: "Any opinion regarding Detective Hart's reputation for untruthfulness should be excluded because it would be more prejudicial than probative." DE #70 at 13. The Court rejects that categorical proposition; the particulars of the trial will define the factors under Rule 403.

The Court will approach this issue at trial with sensitivity to the constitutional, fair play, and just determination values that apply. Bixler will have appropriate leeway, but the Court also will screen the process with the discretion afforded by Rules 402, 608, and 611. Hart may face some rigor of scrutiny, but the Court will not allow gratuitous, abusive, or harassing impeachment of him or any other trial participant. At this time, though, the Court DENIES the motion (DE #72) without prejudice to objection at trial, although with preliminary ruling markers laid.

3. Rule 412 Motion to Exclude (DE #72)

The Government moves to preclude reference to any prostitution acts by the denominated victims, whether prior or subsequent to the events of this case, under Rule 412. The Rule, applicable to proceedings involving "sexual misconduct," generally prohibits introduction of either "evidence offered to prove that a victim engaged in other sexual behavior" or "evidence offered to prove a victim's sexual predisposition." Fed. R. Evid. 412(a). Three exceptions exist, however, in criminal cases: (1) for "evidence of specific instances of a victim's sexual behavior, if offered to

prove that someone other than the defendant was the source of semen, injury, or other physical evidence;" (2) "evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and" (3) "evidence whose exclusion would violate the defendant's constitutional rights." Fed. R. Evid. 412(b)(1). Further, a party seeking to admit evidence under Rule 412(b) must so request in compliance with Rule 412(c). Bixler, in opposing the Government's exclusion request, purports to make the requisite Rule 412(c) motion. *See* DE #77; *supra* note 2.

Defendant argues that the proof is admissible—indeed necessary—under Rule 412(b)(1)(C) to prevent violation of his constitutional rights of confrontation and to present a complete defense. As to the former rationale, Bixler asserts that he will be unable to effectively cross-examine the alleged victims concerning potential bias, or motivation to slant testimony in favor of the Government, if he is not permitted to ask them about benefits (including non-prosecution) they may have received in exchange for their testimony. Per Bixler, the alleged victims "have admitted participation in illegal activities and have a clear motive to offer testimony they view as favorable to the Government in order to avoid any perceived possibility of prosecution for their own criminal activities." DE #77 at 3. Fairly exploring any benefits the witnesses may receive in exchange for their testimony, however—including promised immunity from or leniency in any criminal prosecution—does not require delving into the specifics of the witnesses' alleged (even admitted) criminal conduct. Bixler may question witnesses fully

as to benefits received without exploring to the precise nature of the alleged criminality; the Rule 412(a) bar thus does nothing to limit, much less violate, Bixler's right to reasonable cross-examination and confrontation of witnesses. *See Delaware v. Fensterer*, 106 S. Ct. 292, 294 (1985) ("Generally speaking, the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish."); *Delaware v. Van Arsdall*, 106 S. Ct. 1431, 1435 (1986) (observing that "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits" on cross). Accordingly, preclusion of reference to the witnesses' alleged prostitution crimes prior or subsequent to this case cannot be grounds for a Rule 412(b)(1)(C) exception, as such a limit would not violate Bixler's constitutional rights. *See United States v. Givhan*, 740 F. App'x 458, 463 (6th Cir. 2018) (holding, in a like scenario, that the defendant had no Sixth Amendment right to address a witness's prostitution offense, specifically, and stating: "The Confrontation Clause [] guaranteed Defendant the right to inform the jury that the witnesses had obtained an 'easy out' from potentially serious charges, but it did not guarantee Defendant the right to ask about the witnesses' specific crime of arrest.").

Defendant's second argument for the evidence's admissibility too fails. Though Bixler also attempts to characterize it as a Rule 412(b)(1)(C) exception, essentially based on his right to present a complete defense, Bixler actually makes a Rule 412(b)(1)(B) consent argument. The Sixth Circuit has squarely rejected the contention. Bixler argues that evidence

of the alleged victims' prior or subsequent acts of prostitution tends to disprove an essential offense element, as "evidence that the alleged victims engaged in this conduct before, after or during their association with Mr. Bixler goes to the very core of whether they were forced, tricked or coerced into engaging in commercial sex acts." DE #77 at 3–4. "As a result," Bixler argues, he "will be denied due process if he cannot present proof that tends to demonstrate that the alleged victims participated in commercial sex acts on their own volition." *Id.* at 4. The Sixth Circuit, confronting this precise argument (though without the attempted constitutional spin), noted that "[t]he 'consent' exception . . . refers to 'specific instances of a victim's sexual behavior with respect to the person accused[.]'" *United States v. Mack*, 808 F.3d 1074, 1084 (6th Cir. 2015) (quoting Fed. R. Evid. 412(b)(1)(B) (emphasis added)).[7] Agreeing with the other circuits that had addressed the issue, the Court found that the evidence the defendant urged was inadmissible under Rule 412(b)(1)(B) because it did not relate to the defendant himself. *Id.*; *see also United States v. Cephus*, 684 F.3d 703, 708 (7th Cir. 2012); *United States v. Valenzuela*, 495 F. App'x 817, 820 (9th Cir. 2012).

The Court makes the following specific findings and points:

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[7] "Mack argue[d] that the district court erred in excluding evidence of the victims' prior history of prostitution under Rule 412(b)(1)(B) because it was relevant to show that the victims 'consented' to acts of prostitution while working for him, thereby showing that Mack did not coerce the women into prostituting for him." *Mack*, 808 F.3d at 1084.

As a matter of Rule 412, the evidence plainly is out. *Mack* applied Rule 412 to a § 1591 prosecution. *See* 808 F.3d at 1080, 1084. Other courts have confirmed that the Rule applies in the context of the subject statute. "[S]ex trafficking cases involve 'alleged sexual misconduct.'" *United States v. Haines*, 918 F.3d 694, 697 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 255 (2019). This brings proof in this case under the umbrella of the Rule.

Mack, an analog of this prosecution, flatly forecloses use of other prostitution activity to show consent in the charged trafficking case. *See Mack*, 808 F.3d at 1084; *Givhan*, 740 Fed. App'x at 464 (citing *Mack*, 808 F.3d at 1084) ("But other evidence of prostitution is not admissible to prove that prostitution was consensual on a particular occasion."). This is just the forbidden usage Bixler covets. *Givhan*, as noted, upheld the Rule against a constitutional challenge. Bixler seems to concede the Confrontational Clause analysis—per *Givhan*, the Court can preserve Bixler's confrontation rights and yet honor Rule 412. 740 F. App'x at 464 (upholding apt "limit" on cross as within Rule: "We therefore reject Defendant's Constitutional Clause challenge").

Bixler claims, though, that *Givhan* did not address and that the defendant there did not raise a due process theory. Not true. *Givhan* expressly included analysis under the due process "complete defense" rubric:

> Defendant's argument that the district court violated his right to present a complete defense is unavailing. . . . Nor does it follow that the district court violated Defendant's right to present a complete defense. Under

> the constitutional rule that Defendant has invoked, Defendant must show that the district court applied a rule to exclude evidence without a legitimate basis.

740 Fed. App'x at 464. Other courts, including the Sixth Circuit, have upheld application of Rule 412 against the complete defense due process argument. *United States v. Ogden*, 685 F.3d 600, 605–06 (6th Cir. 2012) (upholding Rule application after engaging in evaluation of centrality of proof to claim of innocence and the validity of state exclusion justification); *Haines*, 918 F.3d at 697 (upholding Rule 412 and stating: "But in cases involving adult victims forced or coerced into prostitution, courts have rejected such arguments [including due process right], concluding that evidence of other prostitution activity has little or no relevance").

Here, Bixler cited no due process law, did not engage in the required calculus, and thus fails in the argument. Rule 412 has well-supported policy goals, and the law resists the consent theory on which Bixler relies. Thus, he does not carry the burden of showing that due process would require that he be allowed to adduce proof that is of weak relevance and low defense centrality, the admission of which would be contrary to logical and non-arbitrary state interests. The Court will guard Bixler's defense rights, but the Constitution does not mandate that he be allowed to breach the fence of Rule 412. *See Thompson v. Larose*, No. 19-4142, 2020 WL 2730795, at *2 (6th Cir. Mar. 19, 2020) (noting that the right to "meaningful opportunity to present a complete defense" has limits: "The right is not 'unlimited,' and 'state and federal rulemakers have broad latitude under the Constitu-

tion to establish rules excluding evidence from criminal trials.'") (quotation omitted).

For all of these reasons, the Court GRANTS DE #72.

4. Conclusion

Accordingly, for the reasons discussed, the Court DENIES DE #70 on the specific terms outlined in this Order, GRANTS DE #72, and, to the extent DE #77 presents a Rule 412(c) motion, DENIES that request.

Lastly, the Court briefly addresses continued sealing of the DE #89 recording and DE #92 Bowles memorandum. As a general matter, "[o]nly the most compelling reasons can justify nondisclosure of judicial records." *Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983). The movant bears the burden of overcoming the "strong presumption in favor of openness[.]" *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016). The presumption is particularly strong when the material relates to a pending request for adjudication because "[t]he public has an interest in ascertaining what evidence and records the District Court . . . relied upon in reaching [its] decisions." *Id.* "[T]he public is entitled to assess for itself the merits of judicial decisions." *Id.* And "even where a party can show a compelling reason why certain documents or portions thereof should be sealed, the seal itself must be narrowly tailored to serve that reason." *Id.*

The Court, at this time, views continued sealing of the subject materials as appropriate. Both the recording itself and the accompanying memorandum

contain personal details and opinions concerning Detective Hart and others, as well as references to investigative techniques and practices within the department. Moreover, the Court has here discussed the salient aspects of both materials, specifically referencing the critical portions that undergird the instant liminal rulings. Further, any additional portions of the materials that become relevant to adjudication, and are appropriate for admission or reference at trial, would ultimately become public at that time. There is thus little need for public access, right now, to the full recording and clarifying document. Accordingly, balancing the relevant interests, the Court finds sealing warranted and DIRECTS that the tendered DE #70-related materials remain under seal, pending further Court order.

This the 12th day of August, 2020.

/s/ Robert E. Wier
United States District Judge

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Federal Rules of Evidence Rule 412, 28 U.S.C.A.—Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition

(a) Prohibited Uses

The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(1) evidence offered to prove that a victim engaged in other sexual behavior; or

(2) evidence offered to prove a victim's sexual predisposition.

(b) Exceptions

(1) Criminal Cases

The court may admit the following evidence in a criminal case:

(A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) Civil Case

In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) Procedure to Determine Admissibility

(1) Motion

If a party intends to offer evidence under Rule 412(b), the party must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) do so at least 14 days before trial unless the court, for good cause, sets a different time;

(C) serve the motion on all parties; and

(D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) Hearing

Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the

motion, related materials, and the record of the hearing must be and remain sealed.

(d) Definition of "Victim."

In this rule, "victim" includes an alleged victim.

18 U.S.C.A. § 1591—Sex Trafficking of Children or By Force, Fraud, or Coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title,

imprisoned for a term not to exceed 25 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means—

(A) threats of serious harm to or physical restraint against any person;

(B) 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

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "participation in a venture" means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).

(5) 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.

(6) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.