

Appendix

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 9 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TERRANCE TYRELL EDWARDS,

Defendant-Appellant.

No. 18-30138

D.C. No.

1:16-cr-00103-SPW-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted December 7, 2020**
Seattle, Washington

Before: McKEOWN and WATFORD, Circuit Judges, and ROTHSTEIN,**
District Judge.

Terrance Edwards challenges the validity of his convictions related to sex
trafficking. We affirm.

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

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Barbara Jacobs Rothstein, United States District Judge
for the Western District of Washington, sitting by designation.

1. The district court did not commit plain error by instructing the jury that the use of the internet, a cell phone, or a hotel room necessarily has at least a *de minimis* effect on interstate commerce, as required for conviction under 18 U.S.C. § 1591(a). Even if the instruction was erroneous, the error did not affect Edwards' substantial rights. The jury heard evidence that Edwards traveled between multiple states in connection with his sex trafficking activities, and that as he did so, he booked hotels in which his victims worked and used his cell phone and computer to post ads for their services on the internet. Edwards has therefore not established a reasonable probability that the alleged error affected the outcome of his trial. For the same reason, we reject Edwards' sufficiency of the evidence challenge to this element of the offense. The jury heard more than adequate evidence to find at least a *de minimis* effect on interstate commerce. *See, e.g., United States v. Sutcliffe*, 505 F.3d 944, 952–53 (9th Cir. 2007); *United States v. Dela Cruz*, 358 F.3d 623, 625 (9th Cir. 2004).

2. *Rehaif v. United States*, 139 S. Ct. 2191 (2019), is not clearly irreconcilable with our prior decision in *United States v. Taylor*, 239 F.3d 994 (9th Cir. 2001). *Taylor* held that a conviction for sex trafficking a minor, 18 U.S.C. § 2423(a), does not require the defendant to know the victim's age. *Taylor*, 239 F.3d at 997. Although *Rehaif* states that the term “knowingly” is “normally read” to apply to each element of a crime, *Rehaif* does not present this principle as a

hard-and-fast rule—let alone a rule that courts must follow even when there are good reasons not to, as we held in *Taylor* for § 2423(a). *See Rehaif*, 139 S. Ct. at 2196. *Taylor* remains binding precedent.

3. The district court did not commit plain error in its instructions to the jury regarding the definition of an “attempt.” Although the instructions regarding obstruction of a sex trafficking investigation, 18 U.S.C. § 1591(d), and tampering with a witness, 18 U.S.C. § 1512(b)(1), did not require a finding that the defendant took a “substantial step” towards the culpable acts, any error in these instructions did not affect Edwards’ substantial rights. The jury heard extensive evidence that after his arrest, Edwards contacted multiple victims by phone and Facebook to try to stop them from cooperating with law enforcement. Given this evidence, Edwards has not established a reasonable probability that the alleged error affected the outcome of his trial.

4. With respect to Edwards’ conviction for interstate sex trafficking, 18 U.S.C. § 2421(a), sufficient evidence supports the jury’s finding that Edwards transported victim A.T. across state lines. Transportation under § 2421(a) does not require that the defendant operate the vehicle that transports the victim, or even that the defendant accompany the victim; it requires only that the defendant arrange the trip. *See Taylor*, 239 F.3d at 996–97. The jury heard testimony that Edwards rode in a car with A.T. from Washington to Montana and that this trip

was arranged by Edwards for the purpose of engaging A.T. in prostitution. This evidence was sufficient for the jury to find that Edwards transported A.T. under § 2421(a).

5. Edwards has waived his right to challenge trial venue with respect to the count for distribution of marijuana because he did not raise this issue until after the jury reached a guilty verdict. *See United States v. Powell*, 498 F.2d 890, 891–92 (9th Cir. 1974).

6. The district court did not commit plain error by admitting into evidence Facebook messages between Edwards and victim S.E., as any error in admitting these messages did not affect Edwards' substantial rights. With respect to Edwards' message to S.E., even though S.E. was not named in the counts for obstruction and tampering, there was ample evidence of similar conduct towards the named victims, as noted above. With respect to S.E.'s reply, although S.E.'s message may have been hearsay, S.E. was subject to cross-examination about its contents. S.E. also testified at length about Edwards' psychological and physical abuse, describing in detail many of the same facts referred to in S.E.'s message. Given this testimony, Edwards has not shown a reasonable probability that admission of S.E.'s reply affected the outcome of his trial.

7. The district court did not abuse its discretion in admitting into evidence Edwards' prior conviction for promoting prostitution. Edwards argued in his

defense that he was helping his victims run their own, non-sexual escort services for their benefit. The trial court properly applied Rule 404(b) of the Federal Rules of Evidence and decided that the prior conviction was probative of his intent to commit the charged crimes.

Evidence of Edwards' prior charge for failure to register as a sexual or violent offender was introduced inadvertently on the same document that presented Edwards' prior conviction. The government concedes that evidence of the prior charge should not have been admitted. However, the prior charge was not mentioned in Edwards' motions in limine, and Edwards did not object to this evidence at trial. Admission of this evidence did not affect Edwards' substantial rights. Neither side ever referred to the prior charge during the trial, and there is no indication in the record that it factored into the jury's deliberations. Thus, Edwards has not shown a reasonable probability that this error affected the outcome of his trial.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 17 2021

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TERRANCE TYRELL EDWARDS,

Defendant-Appellant.

No. 18-30138

D.C. No.
1:16-cr-00103-SPW-1
District of Montana,
Billings

ORDER

Before: McKEOWN and WATFORD, Circuit Judges, and ROTHSTEIN,* District Judge.

The panel unanimously votes to deny the petition for panel rehearing. Judge McKeown and Judge Watford vote to deny the petition for rehearing en banc, and Judge Rothstein so recommends. The full court has been advised of the petition for rehearing en banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc, filed January 24, 2021, is DENIED.

* The Honorable Barbara Jacobs Rothstein, United States District Judge for the Western District of Washington, sitting by designation.

FINAL INSTRUCTIONS TO THE JURY

10:24:16AM 1 order and we get all the copies made, so we'll come back in at
10:24:20AM 2 11.

10:25:12AM 3 (Proceedings in recess from 10:25 a.m. until 11:09 a.m.)

11:09:38AM 4 THE COURT: Court's in session. You may be seated.

11:09:50AM 5 (Open court.)

11:09:50AM 6 (Defendants present.)

11:10:08AM 7 (Jury not present.)

11:10:08AM 8 THE COURT: Please be seated.

11:10:10AM 9 Let's do the alternate.

11:10:12AM 10 Our alternate is A.S.XXXXXXXXXX, who is juror No. 2.

11:10:27AM 11 Okay.

11:10:28AM 12 JURY CLERK MCLEAN: I'll go get them.

11:10:56AM 13 (Jury present.)

11:12:02AM 14 THE COURT: You may be seated.

11:12:03AM 15 And now I will read you the instructions, ladies and
11:12:06AM 16 gentlemen.

11:12:06AM 17 Instruction 17:

11:12:07AM 18 Members of the jury, now that you have heard all the
11:12:10AM 19 evidence, it is my duty to instruct you on the law that applies
11:12:12AM 20 to this case. A copy of these instructions will be available
11:12:16AM 21 in the jury room for you to consult.

11:12:17AM 22 It is your duty to weigh and to evaluate all the
11:12:21AM 23 evidence received in the case and, in that process, to decide
11:12:25AM 24 the facts. It is also your duty to apply the law as I give it
11:12:30AM 25 to you to the facts as you find them, whether you agree with

FINAL INSTRUCTIONS TO THE JURY

11:12:32AM 1 the law or not. You must decide the case solely on the
11:12:36AM 2 evidence and the law. Do not allow personal likes or dislikes,
11:12:40AM 3 sympathy, prejudice, fear, or public opinion to influence you.
11:12:45AM 4 You should also not be influenced by any person's race, color,
11:12:49AM 5 religion, national ancestry, gender, sexual orientation,
11:12:55AM 6 profession, occupation, celebrity, economic circumstances, or
11:13:00AM 7 position in life or in the community. You will recall that you
11:13:04AM 8 took an oath promising to do so at the beginning of the case.

11:13:08AM 9 You must follow all these instructions and not single
11:13:11AM 10 out some and ignore others; they are all important. Please do
11:13:15AM 11 not read into these instructions or into anything I may have
11:13:18AM 12 said or done any suggestion as to what verdict you should
11:13:23AM 13 return - that is a matter entirely up to you.

11:13:27AM 14 Instruction 18:

11:13:27AM 15 The indictment is not evidence. The defendants have
11:13:30AM 16 pleaded not guilty to the charges. The defendants are presumed
11:13:34AM 17 to be innocent unless and until the government proves the
11:13:38AM 18 defendants guilty beyond a reasonable doubt. In addition, the
11:13:41AM 19 defendants do not have to testify or present any evidence to
11:13:45AM 20 prove innocence. The government has the burden of proving
11:13:49AM 21 every element of the charges beyond a reasonable doubt.

11:13:53AM 22 Instruction 19:

11:13:54AM 23 A defendant in a criminal case has a constitutional
11:13:59AM 24 right not to testify. You may not draw any inference of any
11:14:04AM 25 kind from the fact that the defendant did not testify.

FINAL INSTRUCTIONS TO THE JURY

11:29:30AM 1 including the question of the guilt of the defendant, until
11:29:34AM 2 after you have reached a unanimous verdict or have been
11:29:37AM 3 discharged.

11:29:39AM 4 Instruction 41:

11:29:40AM 5 Defendant Edwards is charged in Count One of the
11:29:46AM 6 Fourth Superseding Indictment that on or about a period between
11:29:50AM 7 September 9th, 2016, and September 20th, 2016, in Billings and
11:29:55AM 8 Missoula, in the State and District of Montana and elsewhere,
11:29:59AM 9 the defendant, TERRANCE TYRELL EDWARDS, in and affecting
11:30:05AM 10 interstate and foreign commerce, knowingly recruited, enticed,
11:30:09AM 11 harbored, transported, provided, obtained, and maintained by
11:30:14AM 12 any means an individual, Jane Doe 1, who is known to the
11:30:19AM 13 defendant but whose name is withheld to protect her identity,
11:30:23AM 14 knowing and in reckless disregard of the fact that means of
11:30:27AM 15 force, threats of force, fraud, and coercion as defined in
11:30:34AM 16 18 United States Code Section 1591(e)(2), and any combination
11:30:40AM 17 of such means, would be used to cause Jane Doe 1 to engage in a
11:30:45AM 18 commercial sex act, and attempted to do so, in violation of
11:30:52AM 19 18 United States Code Sections 1591(a) and 1591(b)(1).

11:30:58AM 20 Instruction 42:

11:30:59AM 21 Defendant Edwards is charged in Count One with
11:31:03AM 22 Sex Trafficking by Force, Fraud or Coercion, in violation of
11:31:07AM 23 Title 18 of the United States Code, Sections 1591(a). In order
11:31:13AM 24 for the defendant to be found guilty of that charge, the
11:31:16AM 25 government must prove each of the following elements beyond a

FINAL INSTRUCTIONS TO THE JURY

11:31:21AM 1 reasonable doubt:

11:31:21AM 2 First: From a period between September 9th, 2016,
11:31:26AM 3 and September 20th, 2016, the defendant knowingly recruited,
11:31:32AM 4 enticed, harbored, transported, provided, obtained or
11:31:36AM 5 maintained a person, to wit: Jane Doe 1 (i.e., "J.XXXXX" whose
11:31:44AM 6 full name is withheld to protect her identity);

11:31:47AM 7 Second: The defendant knew, or recklessly
11:31:51AM 8 disregarded the fact, that force, threats of force, fraud,
11:31:54AM 9 coercion or any combination of such means would be used to
11:31:59AM 10 cause Jane Doe 1 to engage in commercial sex acts; and

11:32:04AM 11 Third: The defendant's actions were in or affecting
11:32:07AM 12 interstate or foreign commerce.

11:32:10AM 13 Instruction 43:

11:32:11AM 14 Defendant Edwards is charged in Count One with the
11:32:15AM 15 alternative crime of Attempting to Sex Traffic by Force, Fraud
11:32:19AM 16 or Coercion, in violation of Title 18 of the United States
11:32:23AM 17 Code, Sections 1591(a). In order for the defendant to be found
11:32:28AM 18 guilty of that charge, the government must prove each of the
11:32:32AM 19 following elements beyond a reasonable doubt:

11:32:34AM 20 First, the defendant intended to do the following:

11:32:39AM 21 A. From a period between September 9, 2016, and
11:32:45AM 22 September 20, 2016, the defendant knowingly recruited, enticed,
11:32:50AM 23 harbored, transported, provided, obtained or maintained a
11:32:55AM 24 person, to wit: Jane Doe 1 (i.e., "J.XXXXX" whose full name is
11:33:01AM 25 withheld to protect her identity),

FINAL INSTRUCTIONS TO THE JURY

11:33:03AM 1 B. The defendant knew, or recklessly disregarded the
11:33:09AM 2 fact, that force, threats of force, fraud, coercion or any
11:33:13AM 3 combination of such means would be used to cause Jane Doe 1 to
11:33:17AM 4 engage in commercial sex acts, and

11:33:20AM 5 C. The defendant's actions were in or affecting
11:33:23AM 6 interstate or foreign commerce; and

11:33:25AM 7 Second, the defendant did something that was a
11:33:29AM 8 substantial step toward committing the crime.

11:33:31AM 9 Mere preparation is not a substantial step toward
11:33:35AM 10 committing the crime. To constitute a substantial step, a
11:33:40AM 11 defendant's act or actions must demonstrate that the crime will
11:33:46AM 12 take place unless interrupted by independent circumstances.

11:33:51AM 13 Instruction 44:

11:33:55AM 14 Defendant Edwards is charged in Count Two of the
11:33:58AM 15 Fourth Superseding Indictment that in or about April and May
11:34:02AM 16 2016, in Missoula, in the State and District of Montana and
11:34:06AM 17 elsewhere, the defendant, TERRANCE TYRELL EDWARDS in and
11:34:10AM 18 affecting interstate and foreign commerce, knowingly recruited,
11:34:13AM 19 enticed, harbored, transported, provided, obtained, and
11:34:18AM 20 maintained by any means an individual, Jane Doe 2, who is known
11:34:23AM 21 to the defendant but whose name is withheld to protect her
11:34:27AM 22 identity, knowing and in reckless disregard of the fact that
11:34:30AM 23 means of force, threats of force, fraud, and coercion as
11:34:35AM 24 defined in 18 United States Code Section 1591(e)(2), and any
11:34:43AM 25 combination of such means, would be used to cause Jane Doe 2 to

FINAL INSTRUCTIONS TO THE JURY

11:34:47AM 1 engage in a commercial sex act, and attempted to do so, in
11:34:51AM 2 violation of 18 United States Code Sections 1591(a) and
11:34:56AM 3 1591(b)(1).

11:35:00AM 4 Instruction 45:

11:35:01AM 5 Defendant Edwards is charged in Count Two with Sex
11:35:06AM 6 Trafficking by Force, Fraud or Coercion, in violation of Title
11:35:10AM 7 18 of the United States Code, Sections 1591(a) and (b). In
11:35:15AM 8 order for the defendant to be found guilty of that charge, the
11:35:19AM 9 government must prove each of the following elements beyond a
11:35:23AM 10 reasonable doubt:

11:35:24AM 11 First: In or about April and May 2016, the defendant
11:35:29AM 12 knowingly recruited, enticed, harbored, transported, provided,
11:35:34AM 13 obtained or maintained a person, to wit: Jane Doe 2 (i.e.,
11:35:41AM 14 "S.XXXXXX" whose full name is withheld to protect her
11:35:44AM 15 identity);

11:35:45AM 16 Second: The defendant knew, or recklessly
11:35:48AM 17 disregarded the fact, that force, threats of force, fraud,
11:35:52AM 18 coercion or any combination of such means would be used to
11:35:56AM 19 cause Jane Doe 2 to engage in commercial sex acts; and

11:36:01AM 20 Third: The defendant's action were in or affecting
11:36:05AM 21 interstate or foreign commerce.

11:36:08AM 22 Instruction 46:

11:36:09AM 23 Defendant Edwards is charged in Count Two with the
11:36:13AM 24 alternative crime of Attempting to Sex Traffic by Force, Fraud
11:36:18AM 25 or Coercion, in violation of Title 18 of the United States

FINAL INSTRUCTIONS TO THE JURY

Code, Sections 1591(a) and (b). In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant intended to do the following:

A. In or about April and May 2016, the defendant knowingly recruited, enticed, harbored, transported, provided, obtained or maintained a person, to wit: Jane Doe 2 (i.e., "S.XXXXXX" whose full name is withheld to protect her identity),

B. The defendant knew, or recklessly disregarded the fact, that force, threats of force, fraud, coercion or any combination of such means would be used to cause Jane Doe 2 to engage in commercial sex acts, and

C. The defendant's actions were in or affecting interstate or foreign commerce; and

Second, the defendant did something that was a substantial step toward committing the crime.

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

Instruction 47:

Defendant Edwards is charged in Count Eleven of the Fourth Superseding Indictment that in or about July 2016, in Missoula and Billings, in the State and District of Montana and

FINAL INSTRUCTIONS TO THE JURY

11:38:02AM 1 elsewhere, the defendant, TERRANCE TYRELL EDWARDS in and
11:38:06AM 2 affecting interstate and foreign commerce, knowingly recruited,
11:38:10AM 3 enticed, harbored, transported, provided, obtained, and
11:38:15AM 4 maintained by any means an individual, Jane Doe 6, who is known
11:38:21AM 5 to the defendant but whose name is withheld to protect her
11:38:23AM 6 identity, knowing and in reckless disregard of the fact that
11:38:27AM 7 means of force, threats of force, fraud, and coercion as
11:38:32AM 8 defined in 18 United States Code Section 1591(e)(2), and any
11:38:38AM 9 combination of such means, would be used to cause Jane Doe 6 to
11:38:42AM 10 engage in a commercial sex act, and attempted to do so, in
11:38:47AM 11 violation of 18 United States Code Sections 1591(a) and
11:38:53AM 12 1591(b)(1).

Instruction 48:

11:38:56AM 13
11:38:58AM 14 Defendant Edwards is charged in Count Eleven with Sex
11:39:02AM 15 Trafficking by Force, Fraud or Coercion, in violation of Title
11:39:06AM 16 18 of the United States Code, Sections 1591(a) and (b). In
11:39:11AM 17 order for the defendant to be found guilty of that charge, the
11:39:16AM 18 government must prove each of the following elements beyond a
11:39:19AM 19 reasonable doubt:

11:39:20AM 20 First: In or about July 2016, the defendant
11:39:25AM 21 knowingly recruited, enticed, harbored, transported, provided,
11:39:31AM 22 obtained or maintained a person, to wit: Jane Doe 6 (i.e.,
11:39:37AM 23 "H.XXXXX" whose full name is withheld to protect her identity);

11:39:41AM 24 Second: The defendant knew, or recklessly
11:39:45AM 25 disregarded the fact, that force, threats of force, fraud,

FINAL INSTRUCTIONS TO THE JURY

11:39:50AM 1 coercion or any combination of such means would be used to
11:39:53AM 2 cause Jane Doe 6 to engage in commercial sex acts; and

11:39:57AM 3 Third: The defendant's actions were in or affecting
11:40:00AM 4 interstate or foreign commerce.

11:40:02AM 5 Instruction 49:

11:40:05AM 6 Defendant Edwards is charged in Count Eleven with the
11:40:10AM 7 alternative crime of Attempting to Sex Traffic by Force, Fraud
11:40:15AM 8 or Coercion, in violation of Title 18 of the United States
11:40:19AM 9 Code, Sections 1591(a) and (b). In order for the defendant to
11:40:25AM 10 be found guilty of that charge, the government must prove each
11:40:28AM 11 of the following elements beyond a reasonable doubt:

11:40:32AM 12 First, the defendant intended to do the following:

11:40:35AM 13 A. In or about July 2016, the defendant knowingly
11:40:40AM 14 recruited, enticed, harbored, transported, provided, obtained
11:40:45AM 15 or maintained a person, to wit: Jane Doe 6 (i.e., "H.XXXX"
11:40:51AM 16 whose full name is withheld to protect her identity),

11:40:55AM 17 B. The defendant knew, or recklessly disregarded the
11:40:58AM 18 fact, that force, threats of force, fraud, coercion or any
11:41:03AM 19 combination of such means would be used to cause Jane Doe 6 to
11:41:07AM 20 engage in commercial sex acts; and

11:41:11AM 21 C. The defendant's actions were in or affecting
11:41:14AM 22 interstate or foreign commerce; and

11:41:16AM 23 Second, the defendant did something that was a
11:41:19AM 24 substantial step toward committing the crime.

11:41:22AM 25 Mere preparation is not a substantial step toward

FINAL INSTRUCTIONS TO THE JURY

11:41:25AM 1 committing the crime. To constitute a substantial step, a
11:41:30AM 2 defendant's act or actions must demonstrate that the crime will
11:41:35AM 3 take place unless interrupted by independent circumstances.

11:41:38AM 4 Instruction 50:

11:41:42AM 5 The first element of the crime of sex trafficking
11:41:46AM 6 requires that the government prove that the defendant knowingly
11:41:49AM 7 recruited, enticed, harbored, transported, provided, obtained
11:41:54AM 8 or maintained a person.

11:41:55AM 9 In considering whether the defendant did any of these
11:41:59AM 10 things, I instruct you to use the ordinary, everyday definition
11:42:04AM 11 of these terms. "Recruit" means to secure the services of a
11:42:09AM 12 person. "Entice" means to attract by arousing hope or desire.
11:42:14AM 13 "Harbor" means to give or afford shelter or refuge to a person.
11:42:22AM 14 "Transport" means to transfer or convey from one place to
11:42:26AM 15 another. "Provide" means to supply or make available.
11:42:31AM 16 "Obtain" means to gain, acquire, or attain. "Maintain" means
11:42:36AM 17 to cause or enable a condition to continue or keep in a certain
11:42:40AM 18 state.

11:42:40AM 19 An act is done knowingly if the defendant is aware of
11:42:44AM 20 the act and does not act through ignorance, mistake, or
11:42:48AM 21 accident. The government is not required to prove that the
11:42:52AM 22 defendant knew that his acts were unlawful. You may consider
11:42:55AM 23 evidence of the defendant's words, acts, or omissions, along
11:43:00AM 24 with all the other evidence, in deciding whether the defendant
11:43:04AM 25 acted knowingly.

FINAL INSTRUCTIONS TO THE JURY

11:43:06AM 1 Instruction 51:

11:43:07AM 2 The second element of the crime of sex trafficking
11:43:17AM 3 requires that the government prove that the defendant knew, or
11:43:20AM 4 was in reckless disregard of the fact, that force, fraud or
11:43:25AM 5 coercion would be used against Jane Doe 1 (count one), Jane Doe
11:43:32AM 6 2 (count two), or Jane Doe 6 (count eleven) to cause her to
11:43:37AM 7 engage in a commercial sex act.

11:43:39AM 8 The term "coercion" means: (1) threats of serious
11:43:43AM 9 harm to, or physical restraint against the person; (2) any
11:43:47AM 10 scheme, plan, or pattern intended to cause a person to believe
11:43:52AM 11 that failure to perform an act would result in serious harm to,
11:43:56AM 12 or physical restraint against, any person, or (3) the abuse or
11:44:03AM 13 threatened abuse of law or the legal process.

11:44:05AM 14 The term "serious harm" means any harm, whether
11:44:08AM 15 physical or nonphysical, including psychological, financial, or
11:44:13AM 16 reputational harm, that is sufficiently serious, under all of
11:44:18AM 17 the surrounding circumstances, to compel a reasonable person of
11:44:22AM 18 the same background and in the same circumstances to perform or
11:44:27AM 19 to continue performing commercial sexual activity in order to
11:44:32AM 20 avoid incurring that harm.

11:44:34AM 21 The term "commercial sex act" means any sex act, on
11:44:40AM 22 account of which anything of value is given to or received by
11:44:44AM 23 any person.

11:44:45AM 24 Likewise, "force" means "any form of power, violence,
11:44:50AM 25 or physical pressure directed against another person." "Fraud"

FINAL INSTRUCTIONS TO THE JURY

11:44:57AM 1 means "any deliberate act of deception, trickery or
11:45:00AM 2 misrepresentation." "Power" is "dominance, control or
11:45:05AM 3 influence" and is not limited to physical abuse only.

11:45:10AM 4 Instruction 52:

11:45:11AM 5 The third element of sex trafficking requires that
11:45:13AM 6 the government prove that the recruitment, enticement,
11:45:21AM 7 transportation, obtaining or maintaining a person was in or
11:45:21AM 8 affecting interstate or foreign commerce.

11:45:23AM 9 An act or transaction that crosses state lines is
11:45:29AM 10 "in" interstate commerce. An act or transaction that is
11:45:32AM 11 economic in nature and affects the flow of money in the stream
11:45:36AM 12 of commerce to any degree, however minimal, "affects"
11:45:41AM 13 interstate commerce.

11:45:41AM 14 In determining whether the defendant's conduct was
11:45:45AM 15 "in or affected interstate or foreign commerce," you may
11:45:51AM 16 consider whether the defendant used means or facilities of
11:45:54AM 17 interstate commerce, such as telephones, the Internet, or
11:45:57AM 18 hotels that service interstate travelers, or whether his
11:46:02AM 19 conduct substantially affected interstate commerce by virtue of
11:46:06AM 20 the fact that he purchased items that had moved in interstate
11:46:10AM 21 commerce.

11:46:11AM 22 The United States has offered proof that the sex
11:46:15AM 23 trafficking crime involved the use of cellular telephones, the
11:46:19AM 24 Internet, and hotels. If you unanimously agree that any one or
11:46:24AM 25 all of those facts have been proven beyond a reasonable doubt,

FINAL INSTRUCTIONS TO THE JURY

11:46:27AM 1 then as a matter of law the crime has affected interstate
11:46:32AM 2 commerce.

11:46:32AM 3 It is not necessary for the government to prove that
11:46:36AM 4 the defendant knew or intended that his actions would affect
11:46:41AM 5 interstate or foreign commerce.

11:46:43AM 6 Instruction 53:

11:46:45AM 7 Defendant Edwards is charged in Count Three of the
11:46:52AM 8 Fourth Superseding Indictment that between on or about
11:46:56AM 9 September 20th, 2016, and September 21st, 2016, in Billings, in
11:47:02AM 10 the State and District of Montana, and elsewhere, the
11:47:06AM 11 defendant, TERRANCE TYRELL EDWARDS, knowingly transported Jane
11:47:10AM 12 Doe 3, an individual who had not attained the age of 18 years,
11:47:15AM 13 in interstate commerce, between North Dakota and Montana, with
11:47:19AM 14 the intent that Jane Doe 3 engage in prostitution, in violation
11:47:24AM 15 of 18 United States Code Section 2423(a).

11:47:30AM 16 Instruction 54:

11:47:32AM 17 Defendant Edwards is charged in Count Three with
11:47:36AM 18 Transportation of a Minor With Intent to Engage in
11:47:39AM 19 Prostitution, in violation of Title 18 of the United States
11:47:43AM 20 Code, Section 2423(a). In order for the defendant to be found
11:47:49AM 21 guilty of that charge, the government must prove each of the
11:47:52AM 22 following elements beyond a reasonable doubt:

11:47:54AM 23 First: On or about September 20th, 2016, and
11:47:59AM 24 September 21st, 2016, the defendant knowingly transported Jane
11:48:06AM 25 Doe 3 (i.e., "K.XXX" whose full name is withheld to protect