

No. _____

In The Supreme Court of The United States

JOHNL JACKSON, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The crime of Sex Trafficking by Force, Fraud, or Coercion, 18 U.S.C. § 1591, by virtue of its definitions of “coercion” and “serious harm,” allows the government to pursue a theory of liability that takes account of “a reasonable person of the same background and in the same circumstances” as the complainant to prove the person was coerced into prostitution. Federal Rule of Evidence (FRE) 412 bars admission of evidence of a complainant’s other sexual conduct in a criminal case unless the evidence is constitutionally required. The question is, do the criminal defendant’s constitutional trial rights of due process, confrontation, and compulsory process require the admission of the complainant’s other prostitution activities in order to rebut the government’s narrative of coercion based on a relationship of dependency?
2. FRE 412(c)(1) requires a criminal defendant to provide notice 14 days before trial of his intent to offer evidence of sexual conduct of the complainant, describing the evidence and the purpose for which it is offered. The question is, is FRE 412(c)(1) satisfied by a description of the testimony defendant intends to elicit, or must defendant provide documentary or other evidence backing up his assertion that the complainant engaged in the described conduct? If the later, does the defendant nevertheless have an overriding constitutional right to elicit the evidence despite the notice violation?

LIST OF PROCEEDINGS

1. *United States of America v. Johnl Jackson*, United States District Court, District of Oregon, Case Number 3:19-CR-00458-MO-1. Judgment entered July 25, 2022.
2. *United States of America v. Johnl Jackson*, United States Court of Appeals for the Ninth Circuit, Case Number 22-30133. Judgment entered October 30, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Johnl Jackson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS AND ORDERS BELOW

1. *United States of America v. Johnl Jackson*, 2023 WL 7123781 (9th Cir., October 30, 2023).
2. *United States of America v. Johnl Jackson*, 2022 WL 2712995 (D. Oregon, July 13, 2022).
3. *United States of America v. Johnl Jackson*, 2021 WL 4951936 (D. Oregon, October 25, 2021).

JURISDICTION

The memorandum decision of the Court of Appeals was entered on October 30, 2023. (Appendix 1). This Court has jurisdiction to review on a writ of certiorari the judgment of the Ninth Circuit pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTE AND RULES INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him; [and] to have compulsory process for obtaining witnesses in his favor * * *.

The Fifth Amendment to the United States Constitution provides:

No person shall be * * * deprived of life, liberty, or property, without due process of law.

18 U.S.C. § 1591 provides:

(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).

* * *

(e) In this section:

* * *

(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.

* * *

- (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.

Federal Rules of Evidence (FRE) 412 provides:

(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.

* * *

(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.

STATEMENT OF THE CASE

Defendant was charged and convicted of Conspiracy to Engage in Sex Trafficking, 18 U.S.C. § 1594(c), Sex Trafficking of a Child, 18 U.S.C. § 1591(a)(1), (b)(2), Transportation of a Minor with Intent to Engage in Sexual

Activity, 18 U.S.C. § 2423(a), (e), and Sex Trafficking by Force, Fraud, and Coercion, 18 U.S.C. § 1591(a)(1), (2), and (b)(1). The District Court had jurisdiction pursuant to 18 U.S.C. § 3231.

The government's theory of prosecution was that Mr. Jackson and co-defendant Diana Petrovic drove from Vancouver, Washington, to Eugene, Oregon, to pick up two minor females and bring them back to the Vancouver/Portland area to engage in prostitution. The two minors were identified below as "Minor Victim 4" (MV4) and "Minor Victim 5" (MV5). At the relevant time, MV4 was 15 years of age, and living in a small town near Eugene. MV4 was "troubled" and running away from home a lot. MV5 was 14 years old and living with her mom and grandmother near Eugene.

The timeframe of the charged events covered five days—September 3 through September 8, 2018. On the car ride from Eugene to Vancouver, the minors were given cocaine and ecstasy. MV5 testified that she saw a gun in defendant's waistband, but neither minor testified that he brandished it or used it in a threatening manner.

On arrival in Vancouver, the group went to a house, known as the "bachelor pad," to party. The next day, they went to a house to purchase cocaine. MV4 had sex with the cocaine dealer. MV4 testified that no one forced her to have sex, but she felt pressured because Petrovic had given her things.

Later that same day, the group went to a rural location outside of Vancouver consisting of two pole barns and an auto painting business. A number of adult men were gathered there. Petrovic told MV4 and MV5 to “feel” the scene for possibly offering sex for money. Initially, the men did not seem interested, so the group returned to the “bachelor pad” and consumed more drugs and alcohol.

The group returned to the rural property with the pole barns with the plan to “make money” from the men. Petrovic and the minors were heavily intoxicated. Petrovic testified that defendant carried a firearm in his waistband. Defendant told the minors to say that they were 19 years old. At one point, MV5 said that she was tired and did not want to engage with the men. Petrovic testified that she brought this to defendant’s attention, and he told Petrovic to “slap that bitch,” so she did. MV5 went into a trailer to have sex with a man. She came out of the trailer with money, some of which went to defendant.

MV4 did not have sexual relations with anyone at the pole barn. Instead, she asked a man for assistance in leaving the scene, and he obliged. MV4 testified that she was fearful of Petrovic and defendant, but they did not prevent her from leaving them. MV4 soon connected with her family and returned home.

The next day, MV5 shopped for some new clothes that defendant paid for. Petrovic, defendant and MV5 then went to a house in Portland with the plan for MV5 to see two “tricks” who lived there. MV5 testified that one of the men, Canul, forcibly raped her. Petrovic testified that she had seen Canul many times before, and that he never was sexually assaultive. Petrovic testified she left MV5 alone in the house with Canul because she had no concerns for MV5’s safety.

When MV5 came out of the house and returned to the car, she told defendant and Petrovic that she was going to have someone else come pick her up. At that point, MV5 left the defendants with the intent to meet up with a person named Charlie Hernandez, with whom she had had a sexual relationship. While away from defendants, MV5 was assaulted by three other females, resulting in physical injuries. MV5 claimed that eventually she met up with Hernandez but he did not help her. She ended up at a stranger’s house, and while there, she called Petrovic and asked her to come pick her up.

Petrovic picked up MV5 and took her to a hotel. MV5 claimed that defendant took her phone from her at the hotel. Eventually, she left the hotel room when everyone else was sleeping and connected with her grandfather who drove her back home to Eugene.

Before trial, defendant provided notice of his intent to offer evidence that MV4 and MV5 were involved in sex trafficking activities with Depree Smith in the Portland area before and near the time of the sex trafficking conduct at issue in this case. The trial court categorically excluded this evidence under FRE 412. (Appendix 33-34). Defendant also sought to elicit evidence that MV5 had recently been trafficked by Hernandez, but the court excluded that as well. (Appendix 29-30). Finally, the court prohibited defendant from questioning MV5 about whether she and Petrovic had a sexual relationship after the time period of the charged offense on the ground that defendant had failed to provide adequate notice of his intent to offer this evidence. (Appendix 13-17).

On appeal, defendant asserted the trial court erred with respect to the aforementioned FRE 412 rulings because the evidence was constitutionally necessary to rebut the allegation of sex trafficking by force, fraud or coercion. Defendant also asserted that the trial court erred in concluding that defendant had failed to provide sufficient notice of his intent to offer evidence of the complainant's sexual behavior pursuant to FRE 412. The Court of Appeals affirmed the conviction in an unpublished memorandum decision. (Appendix 1).

ARGUMENT

1. The Supreme Court Should Grant The Petition For A Writ Of Certiorari In Order To Clarify And Delineate The Circumstances In Which Evidence Of A Complainant's Sexual Conduct Must Be Admitted In Order To Vindicate A Defendant's Constitutional Trial Rights In A Case Of Sex Trafficking By Force, Fraud Or Coercion

This case highlights the tension between a rule of evidence that excludes evidence of a victim's "other sexual behavior" and the panoply of constitutional provisions that guarantee a criminal defendant the right to a "meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). FRE 412(a) excludes evidence "offered to prove that a victim engaged in other sexual behavior" or "evidence offered to prove a victim's sexual predisposition" in cases involving alleged sexual misconduct. However, in criminal cases, the defendant may offer evidence that FRE 412(a) would otherwise bar if the "exclusion would violate defendant's constitutional rights." FRE 412(b)(1)(C). Those constitutional rights are found in the Due Process Clause of the Fifth and Fourteenth Amendments and the Compulsory Process and Confrontation Clauses of the Sixth Amendment.

The question is, in a case of sex trafficking by force, fraud or coercion, when does the exclusion of evidence of the complainant's "other sexual behavior," including prior sex trafficking activities, violate those rights?

Lawmakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. *United States v. Scheffer*, 523 U.S. 303, 308 (1998). This latitude, however, may not interfere with the right to present a complete defense embodied in the aforementioned constitutional protections. *Crane v. Kentucky*, 476 U.S. 683, 689–690 (1986). This right is abridged by evidence rules that “infring[e] upon a weighty interest of the accused” and are “arbitrary or disproportionate to the purposes they are designed to serve.” *Holmes v. South Carolina*, 547 U.S. 319, 324–25 (2006) (citations omitted).

The “rape shield” rule embodied in FRE 412 and state evidence codes is not immune from constitutional challenge. In *Michigan v. Lucas*, 500 U.S. 145 (1991), the Court held that Michigan’s rape shield statute “unquestionably implicates the Sixth Amendment. To the extent that it operates to prevent a criminal defendant from presenting relevant evidence, the defendant’s ability to confront adverse witnesses and present a defense is diminished.” *Id.* at 149. The Court overturned the state court’s holding that the notice and hearing requirement was *per se* unconstitutional. *Id.* at 151. But it also confirmed that exclusion of evidence based on a violation of the notice requirement, depending on the circumstances, could violate a defendant’s Sixth Amendment rights. *Id.* at 153.

In *Olden v. Kentucky*, 488 U.S. 227 (1988), this Court held that the defendant's Sixth Amendment right of confrontation was violated when the state's rape shield law was used to prevent defendant from questioning the rape victim about her co-habitation with another man. The defense theory was that the victim falsely accused defendant of rape in order to hide that she had consensual sex with him while in a romantic relationship with the defendant's brother. The trial court categorically barred this evidence under the rape shield law, and the state appellate court affirmed. But this Court reversed, holding that the exclusion violated defendant's right of confrontation because the line of inquiry was critical to his defense. *Id.* at 233.

As reflected in both cases, whether exclusion under Rule 412 violates a defendant's right to present his defense must be evaluated on a case-by-case basis depending on the nature of the evidence and the defense. In this case, the trial court determined that FRE 412 and related case law was solidly against the admissibility of defendant's proffered evidence of MV4's and MV5's other prostitution activities, and the Court of Appeals agreed. (Appendix 3). To be sure, circuit courts have upheld application of the rape shield rule to preclude defendants from eliciting testimony about a sex trafficking victim's other prostitution activities. *See, e.g., United States v. Haines*, 918 F.3d 694 (9th Cir. 2019); *United States v. Rivera*, 799 F.3d 180

(2nd Cir. 2015); *United States v. Cephus*, 684 F.3d 703 (7th Cir. 2012).

Generally, the reasoning of these cases is that “just because a victim agreed to engage in sex for money on other occasions does not mean she consented to, e.g., being beaten or having her earnings confiscated by the defendant.” *Haines*, 918 F.3d at 697-98.

Petitioner does not take issue with that reasoning when the defendant’s conduct is overtly forcible. However, the factual issues at play in a prosecution for sex trafficking by force, *fraud, or coercion* typically are more complicated. The facts of this case demonstrate the point. Although there was some disputed evidence of actual physical “force” used to compel prostitution, the government’s prosecution more predominantly was based on a theory of “coercion.” The government argued that petitioner and Petrovic created a dependency relationship by taking MV4 and MV5 a substantial distance from their parents, and providing drugs and alcohol as well as food, clothing and shelter. By creating this environment of dependency, the government argued, defendants thereby coerced the minors into engaging in commercial sex acts against their will.

Defendant could not rebut this narrative with evidence of the truer picture of the minors’ wherewithal and independence because he was barred from putting on evidence of their other trips to the Portland/Vancouver area to engage in prostitution activities around the

same time. This created an unfair balance in each party's ability to present evidence in support of their competing narratives, thereby denying defendant his right to put on a defense.

Support for this argument is found in the statutory definition of "coercion" and the phrase "serious harm" within the coercion definition, set forth *supra*, pages 2–3. This definition of coercion renders facts about the minors' background relevant, because the issue is whether defendant's conduct was sufficiently serious to compel a reasonable person "of the same background" and in the same circumstances to perform commercial sex acts in order to avoid incurring a harm. Because the jury did not know about the minors' other trips to the Portland/Vancouver area to engage in commercial sex acts, the jury did not have a full and accurate picture of their background, *i.e.* their wherewithal to travel independently of adult supervision. Because the jury did not have that information, the government was able to portray the minors as helpless and completely dependent on defendant. If the jury had an accurate picture of the minors' other prostitution activities, it likely would have reached a different conclusion whether defendant's conduct coerced them into commercial sex acts.

What the jury *did not* hear was evidence that both MV4 and MV5 likely had engaged in prostitution activities in the Portland area with

Depree Smith before and near the time of the indicted conduct. Also, the court did not allow inquiry into whether Hernandez previously had trafficked MV5. On this issue, the court relied on FRE 403. But evidence that Hernandez previously trafficked MV5 was probative of the “force, fraud or coercion” element. During the indicted timeframe, she left defendant and Petrovic with the intent to connect with Hernandez. Evidence that she wanted to connect with a person who had trafficked her would have cast doubt on the implication that she left the defendants because they were coercively trafficking her. The probative value of that evidence was not substantially outweighed by any prejudicial impact.

The government’s exploitation of this imbalanced portrayal of the minors comes across in its closing arguments. In its initial closing argument, the government highlighted the definition of “serious harm” within the “coercion” definition—“a person of the same background and in the same circumstances”—and encouraged the jury “to evaluate the circumstances from a 14- or 15-year-old girl a hundred miles from home.” The government urged the jury to “look at the evidence from the perspective of a 14-year-old girl, *far from home*, with a history of running away, who had been doing drugs and thought her friend abandoned her” (emphasis added) to find that defendant knew or was reckless as to whether force or coercion were used to cause her to engage in commercial sex acts.

Defendant was denied his right to a full defense because he was denied the ability to rebut this narrative that portrayed the minors as completely dependent on defendant and lacking any agency with respect to their actions.

The Court should grant the petition for a writ of certiorari in order to address this unique intersection of a criminal defendant's Sixth Amendment right of confrontation with FRE 412 in the context of a prosecution for sex trafficking by force, fraud or coercion. In particular, the crime's "coercion" variant, which makes relevant the complainant's background and circumstances, should allow inquiry into the person's other prostitution activities in order to rebut a false or incomplete portrayal of the person as wholly dependent upon, and thereby coerced by a defendant to engage in commercial sex acts. The Court is asked to accept this case in order to uphold the right of confrontation in this difficult context.

2. The Supreme Court Should Grant The Petition For A Writ Of Certiorari In Order To Determine Whether Constitutional Trial Rights Are Violated When Evidence Of A Victim's Sexual Conduct Deemed Admissible Under FRE 412 Is Nevertheless Excluded On The Ground That The Defendant Did Not Provide The Government With Documentary Evidence Of The Conduct 14 Days Before Trial

Well before trial, defendant provided notice to the government pursuant to FRE 412 of his intent to elicit testimony that, after the time

period of the alleged criminal conduct, MV5 and Petrovic carried on a sexual relationship. Early on, the trial court agreed that this evidence was admissible notwithstanding FRE 412, because it established evidence of a bias or interest of each witness who would testify against defendant. However, relying on the notice provision of FRE 412, the court precluded inquiry into the relationship because defendant had failed to provide evidence backing up his claim that MV5 and Petrovic had a sexual relationship.

The court erred because (1) FRE 412 does not require disclosure of the type of documentary or corroborating evidence that the court ruled had not been produced; and (2) notwithstanding a violation of any such notice requirement, defendant had an overriding Sixth Amendment right of confrontation to elicit this testimony. This case presents this Court with an opportunity to pick up where the Court left off in *Michigan v. Lucas*, in which it alluded to situations in which the sanction of preclusion for violating an evidentiary notice requirement may violate the right of confrontation.

The notice requirement of FRE 412 provides that a party intending to offer evidence under FRE 412(b) must file a motion at least 14 days before trial that “specifically describes that evidence and states the purpose for

which it is to be offered.” FRE 412(c)(1). About four months before trial, defendant filed a pleading stating:

“The defense has a good faith basis to inquire of [MV5] and Petrovic regarding an ongoing intimate relationship and joint prostitution activities that occurred after the indictment period apart from any involvement by Mr. Jackson. The evidence will impeach [MV5’s] and Diana Petrovic’s credibility by showing they have both been untruthful with law enforcement regarding the nature of their relationship with each other and to show that [MV5’s] ongoing relationship with Petrovic gave her a motive to minimize Petrovic’s culpability by placing the blame on Mr. Jackson.”

The trial court deemed this notice insufficient on the ground that it merely asserted that the relationship existed and that defendant failed to provide some sort of corroborating evidence, such as a text message or an email, to “back up” the assertion. The Court of Appeals agreed. (Appendix 4). But FRE 412(c) simply requires defendant to “describe[] the evidence.” It does not require documentary proof of what defendant intends to elicit. As defendant explained, he intended to elicit testimony about the relationship from the witnesses; he did not intend to produce a text message or other document showing its existence.

Moreover, even if the notice did not comply with FRE 412(c)(1), the court erred in failing to consider whether defendant’s need for this evidence to support his defense excused the technical violation. In *Holmes v. South Carolina*, 547 U.S. 319 (2006), this Court held that a defendant’s right to present a complete defense may not be abridged by evidence rules that

“infring[e] upon a weighty interest of the accused” and are “arbitrary or disproportionate to the purposes they are designed to serve.” *Id.* at 324-25 (citations omitted). Although the notice requirement of FRE 412 serves legitimate purposes of preventing surprise and unwarranted harassment of sex crime victims, application of that requirement to the circumstances of this case is arbitrary and disproportionate. After all, defendant provided notice of what he intended to elicit, removing any risk that the complainant would be caught off guard with questions about personal matters in the midst of cross-examination. The fact that defendant failed to disclose documentary evidence backing up his assertion of a sexual relationship between the victim and the co-defendant did not create a material harm that FRE 412 was designed to prevent.

In *Michigan v. Lucas*, this Court recognized that there could be situations in which application of the rape shield rule’s notice requirements would impermissibly violate a defendant’s Sixth Amendment rights, and it remanded to the state court to determine that matter in the first instance. This case affords the Court a new opportunity to provide guidance on demarcating the line where the Constitution prohibits enforcement of evidentiary notice requirements, the technical violation of which would otherwise lead to the exclusion of exculpatory or impeachment evidence.

The Court is asked to grant the petition for a writ of certiorari for that reason.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 30 2023

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHNL JACKSON, AKA Nelly,

Defendant-Appellant.

No. 22-30133

D.C. No. 3:19-cr-00458-MO-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Submitted October 18, 2023**
Portland, Oregon

Before: KOH and SUNG, Circuit Judges, and EZRA,*** District Judge.

Johnl Jackson appeals his conviction for conspiracy to commit sex
trafficking of a minor and two counts of using force, fraud, or coercion to sex

* 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 David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

traffic a minor (referred to as “MV5”) under 18 U.S.C. § 1591. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Sufficient evidence supported Jackson’s conviction. We review challenges to the sufficiency of evidence de novo. *See United States v. Barragan*, 871 F.3d 689, 705 (9th Cir. 2017). We “must consider the evidence presented at trial in the light most favorable to the prosecution,” and then “determine whether this evidence, so viewed, is adequate to allow ‘any rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt.’” *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc) (alteration in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Jackson argues that the evidence that Jackson took the minor victims far from home, isolated them from their families, and made them dependent on him for food, shelter, and drugs, was not enough to establish the element of force or coercion as a matter of law. However, the evidence also established that Jackson directed his co-defendant to slap MV5 and that he openly carried a firearm when interacting with MV5. Viewing all of the evidence in the light most favorable to the prosecution, we conclude that a rational juror could have found all of the essential elements, including force or coercion, beyond a reasonable doubt.

2. The district court did not err in excluding evidence under Federal Rules of Evidence 412 and 403 that Jackson argues was necessary for his defense. We

review a district court's evidentiary rulings for abuse of discretion. We review de novo the district court's interpretation of the Federal Rules of Evidence, *United States v. Kahre*, 737 F.3d 554, 565 (9th Cir. 2013), and whether the district court's evidentiary rulings violated the defendant's constitutional rights, *United States v. Laursen*, 847 F.3d 1026, 1031 (9th Cir. 2017).

The exclusion of evidence that purportedly would show the minor victim engaged in other prostitution activity did not violate Jackson's constitutional rights. The proffered evidence of other alleged prostitution activity was very thin. Moreover, evidence of a trafficking victim's other prostitution activity has little or no relevance to the question of whether a defendant used force, fraud, or coercion to cause the victim to be trafficked. *United States v. Haines*, 918 F.3d 694, 697–98 (9th Cir. 2019) (collecting cases). Because the evidence that Jackson sought to present is only tenuously connected to his theory that he did not use force, fraud, or coercion to cause the victim to engage in commercial sex acts, he cannot show that his constitutional rights were violated. See *Holmes v. South Carolina*, 547 U.S. 319, 330 (2006) (district judges may “focus the trial . . . by excluding evidence that has only a very weak logical connection to the central issues”).

Additionally, the district court allowed Jackson to introduce evidence of MV5's sexual relationship with Charlie Hernandez and evidence of some relationship with Depree Smith and Keonte Scott. This evidence enabled Jackson

to present his theory of the case. The district court did not abuse its discretion in concluding that any probative value of the excluded evidence would be outweighed by its prejudicial effect.

The district court did not abuse its discretion in excluding evidence of the victim's alleged sexual relationship with the co-defendant, Petrovic, for failure to comply with Rule 412's procedural notice requirements. Jackson only vaguely described the evidence to be introduced, and he did not provide any explanation of the good faith basis for believing that Petrovic and MV5 had a sexual relationship. Because Jackson described the evidence so vaguely and insufficiently, exclusion of the evidence was "not arbitrary nor disproportionate to the purposes behind Rule 412's procedural requirements." *United States v. Chang Ru Meng Backman*, 817 F.3d 662, 670 (9th Cir. 2016) (concluding exclusion of evidence for failure to comply with Rule 412's procedural requirements was "within constitutional bounds" where the defendant's Rule 412 motion "was vague as to the precise nature of the evidence").

AFFIRMED.

1 (P R O C E E D I N G S)

2 (March 8, 2022; 8:31 a.m.)

3 * * * * *

4 (Open court; the jury is not present.)

5 MS. MILES: Good morning, Your Honor. Susan Miles
6 for the United States, along with Pam Paaso and Ashley Cadotte.
7 We are here in the matter of United States versus Johnl
8 Jackson, Case No. 19-cr-458. The defendant is present,
9 represented by counsel, and we're here on the Rule 412 hearing.

10 THE COURT: Thank you.

11 There are several matters to cover today. The first
12 involves a Rule 412 hearing allowing for the victim's rights,
13 based on my prior rulings. So I've previously ruled that
14 evidence regarding a sexual relationship between MV5 and
15 Charlie Hernandez would be admissible, particularly in
16 connection with the statements MV5 made about that across
17 time. And Rule 412 allows MV5 to be heard before I formalize
18 that ruling, by either herself or her attorney, I think, in
19 advance of the jury hearing of this evidence.

20 Would you like to proceed with that piece of it?

21 MS. MILES: We can proceed with that piece of it.
22 She will deny a sexual relationship. So if that denial from
23 her own mouth will help the Court in assessing the
24 admissibility of that evidence, we're happy to have her take
25 the stand and do that. But if the Court wants to proceed just

1 on the government's continued proffer that she will deny having
2 a sexual relationship with Charlie Hernandez, and therefore
3 that questioning is more prejudicial than it is probative, then
4 we can proceed to a final ruling on that. I'll leave it up to
5 the Court.

6 THE COURT: Well, what's your theory that her denial
7 today alters -- should alter my ruling under -- just under Rule
8 412?

9 MS. MILES: It's not just under Rule 412, but Rule
10 403, whether the probative value outweighs the prejudicial
11 impact. And because there is no other evidence to support that
12 she had a sexual relationship with this man, and she is the
13 person who can affirmatively say whether that sexual
14 relationship ever happened, then I think that the Court should
15 take into consideration that she denies that and not allow the
16 defense to bring her sex life in a hypothetical form, which is
17 unfounded, before the jury.

18 THE COURT: It's a 403 issue, but you're really also
19 saying that the defense lacks a good faith basis for the
20 inquiry in the first place?

21 MS. MILES: Yes.

22 THE COURT: And therefore under Rule 412 can't --
23 there is a predicate showing that 412 requires to move the ball
24 forward to the point of allowing admissibility, and you're
25 suggesting now today that there is no such predicate showing

1 the defense can make?

2 MS. MILES: Right. And we've been saying that all
3 along. And I know Your Honor says you're willing to take
4 Mr. Olson's word for it that he has a good faith basis, and I
5 trust Mr. Olson as well, but every showing that he has made
6 when he actually has to produce evidence does not support a
7 good faith basis. And I am concerned, and I think at this
8 point at this final hour -- before this child is put in front
9 of the jury -- that Mr. Olson should actually make a
10 significant proffer and not simply a statement that he has a
11 good faith basis, because the government is aware of none.

12 THE COURT: Thank you very much.

13 Your response?

14 MR. OLSON: Well, Your Honor, we're talking about a
15 relationship with Charlie Hernandez. We have made a good faith
16 basis. We have made a presentation on that. The presentation
17 consisted of she shows up at the house of the Casters, Tesla
18 (sic) Caster, and she tells Tesla Caster that she's had
19 unprotected sex with Charlie Hernandez and that she's worried
20 that she's pregnant, and she talks about a previous time when
21 she had sex with him and lost a baby, or something to that
22 effect.

23 And we have Ms. Caster under subpoena. She'll
24 testify to that. And there's text messages that Ms. Caster has
25 that she sent to her mom, Doneena Caster, talking about this,

1 and the government has them. So there's clear evidence before
2 we get into the sex trafficking, but there's plenty of the good
3 faith basis to believe that she did, in fact, have a sexual
4 relationship with Charlie Hernandez.

5 I think the part Ms. Miles is referring to is the
6 part about have I made a showing of a sexual relationship
7 between MV5 and MV5 -- excuse me, Diana Petrovic.
8 I have not shown that evidence yet.

9 THE COURT: Well, I want to take this one piece at a
10 time so we don't get lost in there.

11 Have I misunderstood what you were asking Mr. Olson
12 to put on as a good faith basis? Do you disagree that he has a
13 good faith basis for inquiring about sexual relationship
14 between MV5 and Charlie Hernandez?

15 MS. MILES: I don't think -- I understand the
16 evidence that he is presenting. This is where I think it might
17 make sense to listen to MV5 herself, because inferences are
18 made from this hearsay, and she denies that those things are
19 true.

20 THE COURT: I just want to -- I'm just trying to
21 build on what your argument really is. A minute ago you told
22 me essentially that you thought he had nothing, and it's
23 clearly not nothing. So how do we get to that point where you
24 were saying there was nothing? Did you not know about this
25 basis?

1 MS. MILES: No, I did know about this, and MV5 denied
2 that those things are true repeatedly.

3 THE COURT: That doesn't erase his good faith basis,
4 it just makes it a fact contest, right?

5 MS. MILES: I think that's -- yes, Your Honor, I will
6 agree with that. I still think that the prejudicial impact is
7 high, because what we're talking about is a sexual
8 relationship. I am fine with inquiring into a personal
9 relationship, into an emotional relationship, and I think all
10 of that is absolutely on the table, and 412 doesn't have a
11 thumb on that scale. It's when we start getting into the
12 sexual relationship that I question the probative value of it,
13 given the fact that the witness denies it, the victim denies
14 it, and Charlie Hernandez, who is the only other party to the
15 conduct, there's no evidence that he has ever said that that
16 happened.

17 THE COURT: All right. Just so I'm clear, your
18 probative purpose for this evidence is to do what?

19 MR. OLSON: Your Honor, it's part of -- so this
20 disclosure that she makes to the Casters is, of course, right
21 in the middle, towards the end of our period of inquiry here,
22 September 3rd to September 8th. The -- there's two parts of
23 it. There's sexual relations with Hernandez, but there's also
24 sex trafficking for Hernandez, and I'm kind of lumping these
25 together for a moment. But she's interviewed by Detective Lee

1 a year later. She doesn't say anything about this. And so the
2 idea here is that she's deflecting blame from Hernandez, she is
3 still deflecting police activity away from Hernandez, because
4 there was a prior incident a month before where there was some
5 suspicion that her mother had that she was trafficking with
6 Hernandez, based on some Facebook posts that she saw, that the
7 mother saw, and MV5 smoothed that over and that became a
8 nonissue, but it was an issue in the sense there was a
9 suspicion by her mother a month before. The police were
10 called, they inquired about it, and nothing happened at that
11 point. And then a month later, here she is with Mr. Hernandez
12 again and showing up at the Casters' house talking about not
13 sex trafficking, but she's talking about having sex with
14 Charlie Hernandez. And then when she's picked up by
15 Ms. Petrovic, she's taken back to the hotel room, and she's
16 texting with her mother, wanting to get out of this situation.
17 And one of things that she says is that the police are
18 contacting Charlie Hernandez, but I haven't seen him.

19 So there's this consciousness that she has, this
20 worry that she has that her mother is going to draw this
21 connection that if she admits that she was with Charlie
22 Hernandez, she's going to be in trouble with her mother, and
23 Charlie Hernandez might be in trouble, because now there's this
24 second time where there's this question raised.

25 THE COURT: I'd like to try to summarize this in

1 terms of what you think the jury would do with this probative
2 value idea. You want to suggest to the jury that because of a
3 relationship with Charlie Hernandez that includes a sexual
4 relationship, that's motive to lie about your client? It's
5 motive to direct the police away from Charlie Hernandez, with
6 whom she has a relationship, to your client?

7 MR. OLSON: Yes.

8 THE COURT: During the period of the indictment?

9 MR. OLSON: Yes, Your Honor.

10 THE COURT: All right. Thank you.

11 It's up to MV5 whether she wishes to testify on this
12 subject or not. It's her right to do so, and I am certainly
13 interested to hear anything she has to say on this subject, but
14 it's up to her whether she wishes to testify or not.

15 MS. MILES: Okay. Well, I do need to clarify one
16 thing, because we just conferred with her again. I want to
17 make sure I'm candid with the Court. So I learned for the
18 first time that she does -- she had one sexual encounter with
19 Charlie Hernandez predating the time that she was with Johnl
20 Jackson and Diana Petrovic. So I just want to make sure that
21 fact is on the record.

22 I still maintain that the probative value of having
23 sex with Charlie Hernandez doesn't outweigh the prejudicial
24 component of it, and her relationship, her emotional
25 relationship, her loyalties to him, all of that we agree is

1 fair fodder for cross-examination. But the sexual relationship
2 itself is what 412 asks us to keep out, and we ask the Court to
3 do that gatekeeping.

4 THE COURT: So you're suggesting that to make -- for
5 Mr. Olson to make the case that she had motive to lie, we
6 recast it or at least limit it to some sort of friendship?

7 MS. MILES: A friendship. Even a romantic
8 relationship is fine.

9 THE COURT: Thank you.

10 I don't want to do this in pieces for testimony,
11 because I don't want to make her testify multiple times. So
12 let's go on and see what else might come up.

13 The second prior ruling I've already made that
14 prompted the possibility of this 412 hearing -- or prompted the
15 hearing and the possibility of victim testimony was Mr. Olson's
16 assertion that he had a good faith basis to cross on a sexual
17 relationship and a prostitution relationship involving MV5 and
18 Petrovic after the indictment -- after the indictment period.
19 The theory, if I have it right, being that those two pieces of
20 a relationship also would create motive to lie, directing the
21 police away from Diana Petrovic and towards your client.

22 Is that right? That's your --

23 MR. OLSON: Yes.

24 THE COURT: That's your evidentiary theory?

25 MR. OLSON: Yes.

1 THE COURT: Do you have a good faith basis for
2 inquiring into a sexual romantic relationship between MV5 and
3 Petrovic, first of all? I'll start there.

4 MR. OLSON: I do, Your Honor. But let me also add
5 that it's not my intent to display that basis to the government
6 or to the witness. And so if -- so what I would do if allowed
7 in this hearing is just simply to ask her the question and then
8 take it as it is. I'm not intending to confront her with any
9 document. If Your Honor needs to see that document, I'm happy
10 to share that with the Court, but I'm not willing to share that
11 with the government.

12 THE COURT: Well, you've had an opportunity already,
13 not on this issue but on other issues to share documents with
14 the Court ex parte to establish what the rule requires you to
15 establish, which is a foundation for seeking the admission of
16 such questioning or evidence. Now you have something I've
17 never seen?

18 MR. OLSON: Yes. The difference being is the
19 material we provided last night I assumed would come out
20 eventually, but this -- so that was not an issue. But this
21 material that forms the basis of this question regarding the
22 relationship with Petrovic is not something that I would intend
23 to use in a trial.

24 THE COURT: So at trial, if allowed to do so, you
25 would just ask the questions that you want to ask about this

1 relationship without the use of any document?

2 MR. OLSON: That's correct.

3 THE COURT: And the document simply establishes in
4 your mind your good faith basis for asking the question?

5 MR. OLSON: Yes.

6 THE COURT: Give me just a moment.

7 Do you have your FRE handy?

8 MR. OLSON: FRE 12 -- 412?

9 THE COURT: Yes.

10 MR. OLSON: Yes.

11 THE COURT: There's a procedure for setting forth
12 admissibility in (c). What you're suggesting doesn't follow
13 that. So tell me how you get around the requirements of
14 412 (c).

15 MR. OLSON: So 412 (c) says that a party must
16 provide -- file a motion that specifically describes the
17 evidence and states the purpose for which it is to be offered.

18 So the evidence, Your Honor, is what we described, I
19 believe, in our original notice that we provided to the
20 government of -- the evidence was relationship between
21 Ms. Petrovic and MV5, so the sexual nature
22 following the period of indictment, or the period at issue.

23 THE COURT: When you say MV5 and Petrovic had a
24 sexual relationship, that's not evidence. That's an assertion.
25 It's backed up by evidence. What evidence do you back that

1 assertion up with?

2 MR. OLSON: Well, what we're saying is we're
3 anticipating that the evidence will be that she'll state from
4 the witness stand that this is the case.

5 THE COURT: So what the rule doesn't allow is for me
6 to let someone in your position to assert that you're going to
7 be able to prove something in the future if you're just allowed
8 to ask this victim questions about her sexual past. That's
9 pretty much what the rule forbids. What it requires you to do
10 is put on not assertions but evidence now -- actually, 14 days
11 ago -- that can then be tested, and if I determine that
12 evidence should be admitted, that's a provisional determination
13 until we hold today's hearing. So today isn't the day for you
14 to ask questions, the answers to which you hope form evidence
15 for your theory. You had to set out this evidence already.

16 I take it from what you're telling me today that you
17 acknowledge you haven't done that.

18 MR. OLSON: Correct. Well, I haven't -- the way I
19 would describe it, Your Honor, is I haven't provided the
20 impeachment evidence, such that if she were to deny it, it's
21 theoretically impeachment evidence that I can confront her with
22 it.

23 THE COURT: What is and what is not evidence is not a
24 super difficult question. I mean, you've either got testimony
25 or you've got documents or photos of her sexual history with

1 Petrovic. Have you put any of that forward yet?

2 MR. OLSON: Your Honor, I think I can say that I'm
3 anticipating a witness is going to say something from the
4 witness stand that would be evidence. And if she doesn't say
5 that, then theoretically I can impeach her with a document.
6 But that's not necessarily what this Rule 412 encompasses.

7 THE COURT: Well, if you're saying that 14 days ago
8 you said that MV5 would admit a sexual relationship with
9 Petrovic, or that Petrovic would admit it, that's fine. Is
10 that what you're saying?

11 MR. OLSON: I guess I'll have to look at the language
12 of our 412 notice. I'm not sure if we put it that way, Your
13 Honor.

14 THE COURT: Well, first of all, you want to show a
15 sexual relationship between these two women. Which of them are
16 you going to rely on? Which of them do you have a good faith
17 basis for relying on that they will testify to its existence?

18 MR. OLSON: Primarily MV5.

19 THE COURT: All right. So you believe that you can
20 put forward evidence that MV5 will admit this
21 relationship, and you believe that -- it sounds like you
22 believe it because if she lies, you can impeach her.

23 MR. OLSON: Which I --

24 THE COURT: But that's not proof, that's hope.

25 MR. OLSON: Well, I understand, Your Honor, and I

1 guess --

2 THE COURT: Do you have a statement from her at any
3 point at which she admits this relationship?

4 MR. OLSON: I'm not in a position to share that, Your
5 Honor. And so I know -- I'm not trying to put you in a
6 difficult position. I'm just saying that I've got a good
7 faith --

8 THE COURT: I'm just trying to follow the rule. So
9 the rule doesn't allow this. The rule doesn't allow you to
10 come in and hold a preview of your trial cross in a 412
11 hearing. That's not the purpose of a 412 hearing, for you to
12 hope that you can nail down what you haven't yet nailed down by
13 crossing a victim about her sexual past. And if I understand
14 anything about 412, that's specifically what it doesn't allow.
15 So I'm not going to allow that.

16 You either have or don't have a good faith basis for
17 asserting that this sexual relationship existed, and that's
18 going to be either that MV5 said so on some prior occasion or
19 Petrovic said so, or there's texts to prove it or something
20 like that. It's not that you think you can get her to admit it
21 on the stand in a 412 hearing.

22 So unless you are prepared to -- well, now it's 14
23 days too late for you to put on anything like that. So I'm not
24 going to allow this inquiry.

25 Then the third actually has problems under 412, but

1 I'm going to pick it up anyway because that's how far we've
2 gotten, and I'll think about it as we go. And that's last
3 night's disclosure of a couple pieces of evidence that the
4 defense contends put in a different light the jail calls. And
5 that certainly is an allowable purpose under 412. So I'm
6 interested to hear your further take on it.

7 MS. MILES: I think we're back in the same boat, Your
8 Honor. I agree that it's relevant to ask her about
9 relationships with Keonte Scott, with Depree Smith, loyalties,
10 even romantic feelings. I think all of that is fine. But
11 where we would like the Court to draw the line is probing about
12 any sexual encounters.

13 Again, we have from MV5 herself a denial that
14 she had any sexual relationship with these men, that she was
15 ever prostituted by them, but she fully admits that she did
16 have relationships with them, that she sent Keonte Scott money
17 when he was in jail, that she talked with him on the phone.
18 She's had relationships with both of these men to some extent.
19 And I think that there's an ability to probe the biases and the
20 motives to lie that come out of that. We won't stop that. But
21 what we want to stop is an attempt to parade inferences of
22 sexual promiscuity before the jury.

23 THE COURT: Thank you.

24 Do you wish to be heard further before I make a
25 decision about live testimony?

1 MR. OLSON: Your Honor, just on that last point, you
2 know, it's not just about biases. It has to do with this
3 particular phone call on September 30th, what Keonte Smith
4 (sic) could have been -- who he could have been trying to
5 protect with respect to that phone call. And so these
6 transcripts show some sort of relationship. It appears to be a
7 prostitution relationship between Keonte Smith --

8 THE COURT: What's your best evidence that it's a
9 prostitution relationship?

10 MR. OLSON: Well, in the very first phone call, so
11 referring to -- in the very first phone call between Keonte
12 Scott and MV5 on November 24, 2018 -- this is my
13 Exhibit 163-T -- they're introducing themselves. She says
14 she's 18. As the conversation kind of goes along --

15 THE COURT: I have a page 2, a page 3. I assume you
16 do, too. What page are you on?

17 MR. OLSON: There's that, where Mr. Scott says --

18 THE COURT: What page are you on?

19 MR. OLSON: Page 2.

20 That Mr. Smith "gave me your number and shit 'cause I
21 told him I'm trying to look -- look for a woman, shit, to come
22 fuck with and shit, talk to."

23 And then so that's Mr. Scott's desire.

24 MV5 says, "Yeah. I was going to put a hundred
25 dollars on his books." And then they talk about Mr. Depree for

1 a second. She says she's 18 years old.

2 And then if we go forward to page 5, bottom of page
3 5, line 24, Mr. Scott asks, "What do you -- what do you be
4 doing for fun?"

5 She says, "I'm not about to say that over the phone.
6 But, like -- I like to do my thing."

7 And then Mr. Scott says, "No, I already know what you
8 do. I know what you do."

9 MV5 says, "Yeah."

10 Mr. Scott says, "Run it up."

11 MV5 says, "I'm actually doing it right now.

12 "For real?"

13 MV5 says, "Chasing the check. You feel me?"

14 And then MV5 down below says, "That's why I'm
15 going to help you -- I was going to help you."

16 "For real?"

17 "Yeah."

18 So that's the first phone call.

19 The next phone call, which happens on the next day,
20 on page 2 -- excuse me, page 3, line 10, Mr. Scott says, "You
21 don't even need to really throw -- throw nothing on the books.
22 I just need money on the phone. That's really what I need so
23 far, so that I'm able to call you and shit."

24 MV5 says, "Yeah, I got you. I got, like, four
25 moves tomorrow."

1 I think an inference can be made that "moves" means
2 prostitution activity.

3 Mr. Scott says, "Yeah, running daddy up a bag."

4 "Daddy" is a frequently used term for pimp.

5 So -- and we've just heard that she did, in fact, put
6 money on his books.

7 So, you know, I don't know how long lasting it was or
8 how thorough it was, but there's some evidence there of a
9 prostitution relationship.

10 And so then when we fast forward to September 30th,
11 and MV5 says, "I'm going to go talk to a detective," and
12 Mr. Scott says, "You know the rule of the streets," and she
13 says, "Yeah," she could -- he could be certainly protecting
14 himself based on this phone conversation.

15 I'll add, Your Honor, that when Mr. Scott in one of
16 his several interviews with Detective Lee, he was asked, "Who
17 are all the girls that you were responsible for? Who are all
18 the minors that you trafficked?"

19 And actually he mentions MV5, and then he
20 kind of clarifies later on that that was by virtue of my
21 involvement with Diana and that sort of thing, but, you know,
22 he seems to have some acknowledgement that he was responsible
23 for trafficking MV5. So there's that.

24 And then the Depree Smith part is -- so it's Depree
25 Smith that introduces the two of them. That's why Mr. Scott

1 calls her in the first place.

2 THE COURT: You're getting that from the first phone
3 call?

4 MR. OLSON: Yes. And he says that to the agents as
5 well, that that's how they met.

6 And then when he gets indicted in June of 2019 in his
7 cases -- sex trafficking case, he calls MV5 -- this is
8 our last exhibit -- and says, "Call up Pree and tell him this
9 is happening."

10 And so that's relevant for a couple reasons, because
11 it shows that there's some sort of relationship between
12 Mr. Scott and Mr. Smith regarding trafficking, such that
13 Mr. Scott will want Mr. Smith to know that he's been indicted,
14 and the fact that he's relying on MV5 to relay the
15 message shows that there's at least some sort of relationship
16 amongst the three of them.

17 THE COURT: All right. Thank you.

18 Is there anything in the transcripts we've just been
19 referencing -- Well, let me back up. You acknowledge that it
20 might come within 412 to allow inquiry into some sort of
21 relationship -- sanitized, perhaps -- that would create a
22 motive to either make -- to explain the phone call in a
23 different light and/or to lie about Mr. Jackson, and contend
24 that 412 and 403 ought to limit any inquiry into any potential
25 sexual nature of that relationship, which in any event you say

1 MV5 would deny?

2 MS. MILES: Right.

3 THE COURT: Is there anything in the transcript
4 itself, if it were admitted or usable, that in your view
5 actually sets out a sexual relationship?

6 MS. MILES: No.

7 THE COURT: If the scope of the inquiry were limited,
8 as you've suggested, would you be objecting in any way to the
9 use and admissibility of the transcript itself?

10 MS. MILES: I don't think so. Can I confer with
11 co-counsel before I --

12 THE COURT: Sure. I'm going to take a short break
13 anyway, and then you can all confer about that.

14 MS. MILES: Thank you, Your Honor.

15 THE COURTROOM DEPUTY: Court is in recess.

16 (A recess is then taken.)

17 THE COURT: What's the United States' position on the
18 transcript?

19 MS. MILES: We don't have an objection.

20 THE COURT: Here's my ruling. There are fundamental
21 procedural protections under Rule 412 that haven't been
22 followed in this case, particularly the 14 days to put forth
23 the evidence that supports the theory here. I think I'd be
24 following the rule to completely exclude this evidence under
25 Rule 412 for that procedural violation, which isn't minor, it's

1 the whole heart of the rule in many ways. But if the
2 transcript is let in for no prior sexual relationship
3 purpose -- in other words, if that's not the purpose of the
4 transcript, then this becomes evidence that's not subject to
5 Rule 412.

6 I am going to let the transcript in, and I am going
7 to allow the defense to advance a theory that's very similar
8 but not identical to the one they've asked for, and that theory
9 that I am allowing is that there's a friendly relationship
10 between MV5 and Scott and Smith -- money on the books and a
11 friendly conversation -- and you can use that all to suggest to
12 the jury a different take on the later jail call that's viewed
13 as threatening by the United States.

14 I won't allow inquiry into or argument that these
15 show a sexual relationship or pimp relationship between MV5
16 and either of these two men.

17 So with that -- and that's both under 412 and 403.

18 So I don't view the need for any live testimony. I
19 don't see anything further we need to do before the jury comes
20 in at 9:30.

21 Anything further from the United States?

22 MS. MILES: The only thing I wanted to tie up is the
23 final ruling on Charlie Hernandez. I think the Court has
24 spoken about it, but I'm not sure exactly what you're allowing
25 in in terms of the sexual relationship.

1 THE COURT: So here there is no 14-day problem, and I
2 view Mr. Olson as having a good faith basis for his assertion.
3 MV5 is well within her rights, and I'm more than willing to
4 hear her out on this subject, it's just up to you -- her lawyer
5 and her -- whether she wishes to testify to that here in court
6 today.

7 MS. MILES: I don't think that we need her testimony,
8 Your Honor, so it really -- it's really just a question of
9 whether the probative value outweighs the prejudicial impact of
10 speaking about any sexual contact between the two of them,
11 which would be outside of the time period of indictment, as
12 opposed to limiting the testimony to the contact and the
13 relationship that they had within the time period that we're
14 talking about.

15 THE COURT: I don't see it as altering my ruling.
16 She certainly could take the stand and adamantly deny it
17 credibly, and I don't think that changes what I do as a sort of
18 a gatekeeper, a non -- a nondecider of facts on this question.
19 It doesn't erase Mr. Olson's good faith basis for inquiring
20 into this relationship on the foundation that he has, so I'm
21 not altering my ruling. He will be allowed to inquire into a
22 sexual relationship with Charlie Hernandez.

23 We'll be in recess.

24 MR. OLSON: And the trafficking?

25 THE COURT: Pardon me?

1 MR. OLSON: And trafficking or just sexual?

2 THE COURT: Well, all you have a good faith basis for
3 that you've told me is sexual relationship. So unless you have
4 something else that you can point to.

5 MR. OLSON: The good faith basis with respect to the
6 trafficking is, number one, her mom's concern that she had been
7 trafficked the month before, which had been smoothed over, I
8 guess. That's number one.

9 Number two, when MV5 was interviewed by
10 Detective Lee in December, she made some statements along the
11 lines of no, he didn't actually traffic me, but he may have
12 tried to, and he may have engaged in grooming behaviors but he
13 didn't actually traffic. And so that's important -- and the
14 way she kind of tells the story is -- you might question the
15 plausibility of it, because she's saying when Mr. Hernandez
16 wanted me to go out and make money, he could have been talking
17 about going out and stealing things or selling drugs and that
18 sort of thing.

19 And she also -- with the grooming piece, it is
20 important, Your Honor, also because she also claims Mr. Jackson
21 groomed her. So there's some reason to believe that perhaps
22 she's confusing or conflating who is grooming who during this
23 very relevant time period.

24 So I would like to be able to ask her those questions
25 about it, even though she's denied it, but now she's sort of

1 admitted that he may have been trying to do that.

2 THE COURT: So you want to ask her did Mr. Hernandez
3 groom you, and you want to ask her was he prostituting you?

4 MR. OLSON: Well, I do want to ask her whether he was
5 grooming her, yes. And I also --

6 THE COURT: Are you limiting your request to that?

7 MR. OLSON: No.

8 THE COURT: "Was he grooming you?"

9 MR. OLSON: No. I would also like to just ask her
10 questions about whether in fact she was being sex trafficked by
11 Mr. Hernandez.

12 THE COURT: And your basis for that is that she spoke
13 of him wanting her to make money for him, and that her mother
14 believed it was so --

15 MR. OLSON: Well, her mother --

16 THE COURT: -- with regard to some individual?

17 MR. OLSON: Her mother suspected it the month before,
18 and so the fact that her mom was suspecting this at least is
19 some indication that perhaps it was going on, and then -- but
20 more importantly, it would explain why she's now trying to keep
21 this from her mother a month later, because her mom was
22 suspicious about it a month before, and now here she is with
23 Charlie Hernandez again at the time of her involvement with
24 Mr. Jackson and Ms. Petrovic.

25 THE COURT: Thank you.

1 Your response?

2 MS. MILES: This falls squarely within 412. This is
3 what we spoke about before. The mother, it's true, had --

4 THE COURT: I'm sorry. What falls squarely within
5 412 doesn't have anything to do about whether it's a pimp
6 relationship or a sexual relationship. I'm allowing inquiry
7 into the sexual relationship, so we're already past 412. Now
8 I'm just asking your position about whether he has a good
9 faith -- fundamentally, I'm asking do you acknowledge or not a
10 good faith basis for inquiring into whether this sexual
11 relationship, which the jury will hear about, is also a
12 financial one. What's your take on that?

13 MS. MILES: Not based on what he stated, no. And
14 certainly not from the mother's influence -- or inferences,
15 that's not a good faith basis. She expressly said afterwards
16 that those inferences were just because she had watched a news
17 story about trafficking, and she was worried about her
18 daughter, and she actually had no reason to believe that that
19 was true. So that -- there's very little weight.

20 And as to the grooming component of it, I think
21 there's a good faith basis to ask about grooming, but then my
22 question comes back then to the 403 balancing. So to what end?
23 If all he's trying to show -- if he's trying to leave the jury
24 with the inference that this child was trafficked by more than
25 one person, there is -- under Ninth Circuit law, that's not a

1 basis for getting it in, and so my question is what is the
2 probative value of even asking about an inchoate prostitution
3 relationship might have been with Charlie Hernandez that isn't
4 going to be accomplished by getting at her romantic
5 relationship with him.

6 THE COURT: Thank you very much.

7 My ruling is more under 403 than anything else here,
8 and I often think of 403 as looking at what incremental value a
9 piece of evidence adds to what the jury will also know based on
10 other rulings.

11 So the jury here will know when -- at least -- at
12 least that's what you intend to have the jury learn, if it goes
13 your way, that MV5 and Hernandez had a romantic and sexual
14 relationship. And that creates, you know, 90-plus percent of
15 the motive to hide and lie that you wish to the jury to learn
16 about here.

17 The incremental piece is grounded in very thin
18 evidence, in some cases not really evidence, and others just
19 thin inferences. So its probative value, both incrementally --
20 that is, what it adds to what the defense wants to accomplish
21 from what the defense will already have in the case -- and its
22 probative value just as to the strength of the inference that
23 can be drawn from the evidence itself is weak and its unfair
24 prejudice is high.

25 So I'm excluding inquiry about a pimp relationship

1 with Charlie Hernandez, but not about a sexual romantic
2 relationship.

3 MS. MILES: Your Honor, I'm sorry. Can I ask just
4 one more question?

5 THE COURT: Yes.

6 MS. MILES: This was an issue that came up with the
7 jury instructions, and I didn't know if the Court wanted to
8 take that up briefly right now.

9 THE COURT: Do I understand the United States to
10 agree to a particular version of it?

11 MS. MILES: Right.

12 THE COURT: So -- and you have -- you have an
13 objection to adding the additional language the United States
14 has requested from at least *Flores*?

15 MS. MILES: No, the defense is asking to add the
16 additional intent definition. We're fine with it as long as
17 we're following the majority opinion in *Flucas*, I think the
18 name of the case is.

19 THE COURT: So I am going to do that. I am going to
20 add that language, the language the United States has proposed
21 in its red line. So we will add that language to that jury
22 instruction.

23 MR. OLSON: Thank you, Your Honor.

24 Your Honor, can I just clarify one other thing?

25 THE COURT: Yes.

1 MR. OLSON: Just a clarification. When you say the
2 transcripts come in, are you referring to those three
3 transcripts of those phone calls?

4 THE COURT: In your proffer from last night?

5 MR. OLSON: Yes.

6 THE COURT: Yes.

7 MR. OLSON: Your Honor has ruled we didn't follow
8 412. Is that just with respect to the Diana Petrovic
9 relationship part or is it with respect to these -- the rest of
10 this about --

11 THE COURT: Well, the telephone calls weren't given
12 14 days in advance.

13 MR. OLSON: Okay.

14 THE COURT: And those were -- you obtained those
15 through your own subpoena.

16 MR. OLSON: Yes.

17 THE COURT: Not something the government had that you
18 hadn't seen?

19 MR. OLSON: I'm pretty sure that's correct.

20 THE COURT: All right. So it didn't follow 14 days,
21 so that's enough to keep it entirely out, but as I said,
22 sanitized, it's no longer a 412 piece of evidence, and so it
23 can come in without the 14 days now.

24 MR. OLSON: All right. Thank you for that
25 clarification.

1 depending on their content.

2 THE COURT: You've told me the results of your
3 searching so far. What about this last exchange with
4 Mr. Scott's lawyer?

5 MS. PAASO: I'm not aware of, and we have -- we felt
6 like we were diligent this summer in going through everything.
7 If there's anything else that we find -- and we can certainly
8 contact Ms. Ludwig and see if there's something that we have
9 missed that needs --

10 THE COURT: I just need to know your position. I
11 take it your position is you've looked and haven't found
12 anything on both scores?

13 MS. PAASO: Correct.

14 THE COURT: Thank you very much.

15 Before we turn to voir dire, jury instructions,
16 verdict form, I want to turn to five categories of Rule 412
17 evidence in the case. The fifth one I'm not going to be able
18 to discuss here. The government is aware there's an ex parte
19 filing regarding 412 evidence in the case. We'll have to deal
20 with that one as it comes, when the United States gets its
21 opportunity to respond to it.

22 That puts four on the table. I'm going to give you
23 my tentative views, and then I'll hear from you.

24 Evidence relating to Charlie Hernandez trafficking
25 MV5. So that's a -- there's a broad description of evidence

1 here that includes both -- well, at a minimum pre-indictment
2 time periods. Rule 412 case law is pretty solid that learning
3 that a sex victim and/or prostitute had been trafficked by
4 someone else on some earlier occasion doesn't tell the jury
5 anything it should know in the case. To some degree 412 is a
6 thumb on the scale overriding perhaps 401 a little, but for
7 good reason, and there it sits, at any rate, as the law of
8 evidence in the case.

9 So at most I would only allow defendant to use
10 evidence that Charlie Hernandez trafficked MV5 during the
11 period of the indictment. Even that will require me to
12 understand better in the context of the case what's being
13 offered.

14 There's evidence relating to Depree Smith trafficking
15 MV5 and MV4 at different points. It's the same fundamental
16 idea under Rule 412, which includes this evidence at least for
17 the general proposition. Unless there is some specific other
18 evidentiary avenue in mind for the general proposition that it
19 gets at the question of coercion here, it's kept out by Rule
20 412.

21 There's general evidence of prior prostitution and
22 escorting of the complainants here, not specifically linked to
23 either Charlie Hernandez or Depree Smith, and that has the same
24 basic ruling.

25 It brings up the Defense Exhibit 103, and I guess I

1 was not certain what the evidence purpose of 103 was for here.

2 Can you tell me?

3 MR. OLSON: I'm sorry, is that --

4 THE COURT: That's the Moneybagbaby Instagram image.

5 MR. OLSON: Okay. That's --

6 THE COURT: What's the evidence purpose?

7 MR. OLSON: Your Honor, there was -- yeah, there was
8 some photographs within MV5's Instagram account that were
9 indicative of sex trafficking and prostitution.

10 THE COURT: Okay. So that just falls within my
11 general ruling, then.

12 The fourth is more specific. It's evidence of MV5's
13 and Petrovic's -- two things -- ongoing intimate relationship
14 and joint prostitution activities. And here the question isn't
15 just coercion, it's motive to lie.

16 And, of course, the intimate relationship is a fairly
17 obvious one. If they're in some sort of intimate relationship,
18 then MV5 has motive to get Petrovic off the hook and nail
19 somebody else with her accusation. This is similar, I suppose,
20 with joint prostitution activities. If the two of them are
21 engaged in prostitution together, then certainly, at least in
22 their initial interviews, it would be reason to hide those
23 activities, not mention them while discussing Jackson's
24 involvement.

25 So my own view is that that is a separate evidentiary

1 channel than the one forbidden by Rule 412, and my tentative
2 view is to allow it.

3 So I'll start with the first three, whether you have
4 anything further you wish to offer, Mr. Olson.

5 MR. OLSON: Yes, Your Honor.

6 The part about Charlie Hernandez is really quite
7 central to our case, and for a couple of reasons.

8 THE COURT: For what time period?

9 MR. OLSON: I'm sorry?

10 THE COURT: For what time period, since the case
11 makes a pretty important distinction.

12 MR. OLSON: Not far back in time. September 3rd is
13 the date that the defendants allegedly pick up these girls in
14 Eugene. And so going back in time from there, MV5's
15 involvement with Charlie Hernandez extends back into the month
16 of July, and not sex trafficking related, but there's some
17 other police encounters where the two of them are together.

18 But the incident that appears to be trafficking
19 related occurs on August 3rd, which is within the indictment
20 period, as alleged in the indictment, and that was a situation
21 where MV5's mother and grandmother were seeing her
22 open Facebook page that she had left on a device at home, and
23 there was a message in there to the effect of -- from Charlie
24 Hernandez to MV5, basically saying something like don't
25 come back until you've made some money or something like that.

1 And then MV5's mother has a text exchange
2 with her daughter, and her daughter basically says that she
3 feels -- she wants to come home, she doesn't want to be with
4 these people anymore, and she feels trapped in some way. And
5 so Ms. GXXXXXX -- that's the mother -- initiates this police
6 contact, and there's a welfare check that occurs at
7 Mr. Hernandez's home, and then by the time the police get
8 there, however, MV5 tells her mom it's no big deal,
9 there's nothing going on here, and so nothing happens
10 basically, but there is some documentation or some reason to
11 believe that there was some sex trafficking going on.

12 Now, what makes that particularly relevant to our
13 case, Your Honor, is that then in the midst of this time period
14 where MV5 is with Ms. Petrovic, which is
15 September 3rd through September 8th, in the midst of that time
16 period, Ms. Petrovic is away from -- excuse me, MV5 is
17 away from Ms. Petrovic and Mr. Jackson, and she goes off and
18 sees Charlie Hernandez.

19 When she first talks to Agent Lee about Mr. Jackson
20 and Ms. Petrovic, she says nothing about this. She says that
21 she is with --

22 THE COURT: "This" meaning nothing about --

23 MR. OLSON: Charlie Hernandez. She says she's with
24 Petrovic and Jackson the entire time, that they're holding her
25 captive, they take her phone away, and they're engaged in

1 repeated acts of prostitution against her will, and then in
2 grand jury she says she's with him for a month, which is
3 obviously not true. It's only after, when she is confronted
4 with the fact that there's this police report out there,
5 because she's with Mr. Hernandez for a period of time, she ends
6 up on the doorstep of Doneena and Tesla (sic) Caster, who live
7 in St. Johns. She doesn't have any shoes on, she's beat up,
8 she's got a bite mark on her cheek. She tells this story about
9 how she got chased off and had a fight with this girl. She was
10 with Mr. Hernandez, had unprotected sex, she's afraid that
11 she's pregnant, and so on and so forth. She tells this story
12 to Tesla Caster, and eventually she calls up Ms. Petrovic, and
13 Ms. Petrovic comes and picks her up.

14 So this whole episode is not described at all in her
15 first description of the events when she's talking to Agent
16 Lee, and it's only when she's confronted with the fact that
17 Ms. Caster had called the police or there's a report generated
18 of this that she says, oh, yes, I did -- I was separated for a
19 while, I was trying to find Mr. Hernandez, but I couldn't
20 actually find him, and then I got back together with
21 Ms. Petrovic. That's her second story.

22 Her third story, which was told just back in
23 December, which is after we filed this FRE 419 notice, her most
24 recent story is that in fact she did connect with
25 Mr. Hernandez, and she was with him. And she was asked

1 questions about, well, did he ever traffic you? And she
2 basically said, not really, but, you know, he may have tried
3 to. He may have groomed me, things like that.

4 THE COURT: So you have three stories.

5 MR. OLSON: She's got three different stories.

6 THE COURT: What do you want the jury to do with
7 that?

8 MR. OLSON: Well, I want them to hear all those
9 stories, obviously.

10 THE COURT: Right. And then do what with that
11 knowledge?

12 MR. OLSON: And know that she's got a motive, when
13 she's talking about Mr. Jackson's involvement, she's got a
14 motive to deflect blame from herself for connecting with
15 Charlie Hernandez, because Charlie Hernandez is somebody that
16 she connected with just a month before.

17 THE COURT: I want to nail down the motive. The
18 motive she has -- what you're saying is she has a motive to
19 lie?

20 MR. OLSON: Yes.

21 THE COURT: And where does that motive come from?
22 She's motivated to lie about your client because why?

23 MR. OLSON: Because she can deflect blame from her
24 own having hooked up with Mr. Hernandez. Let me explain that
25 part.

1 So previously, a month earlier, she connects with
2 Mr. Hernandez. Her mom thinks she's being trafficked, and
3 somehow she talks her mom out of the idea she wasn't being
4 trafficked, it was just a miscommunication.

5 So a month later she's with Mr. Hernandez again, and
6 then when she's interviewed a year later by Agent Lee, she's
7 with her mom, not literally in the car, they're interviewing
8 her in a car, I think in a parking lot of McDonald's. Her mom
9 is in the McDonald's.

10 So imagine the scenario if MV5 now has to
11 tell her mom, hey, this whole terrible episode that I've been
12 telling you about with Mr. Jackson and Ms. Petrovic, I was
13 actually with Charlie Hernandez at that time. And this is
14 what -- if she were going to have to tell that story to her
15 mom, then you can imagine what her mom's reaction might be to
16 that.

17 But instead -- so she lies, and she lies by making
18 Mr. Jackson out to be the bad guy, and she says some things
19 that are really outrageous. And they're outrageous not because
20 we think they're outrageous, but they're outrageous because
21 they're inconsistent actually with what MV4 says
22 and what Ms. Petrovic has said.

23 THE COURT: So this motive to lie depends on her
24 relationship with Charlie Hernandez being one she was engaged
25 in -- I'll use the word "voluntarily." She wants -- your idea

1 is instead of admitting a voluntary relationship with Charlie
2 Hernandez, which would somehow get her in trouble with her mom,
3 she's going to lie about that and say she was in a coercive
4 relationship with your client. That's the motive to lie, and
5 that's the lie?

6 MR. OLSON: Well, and there's another piece to it.
7 Another motive to lie is that she's afraid of Charlie Hernandez
8 because he's physically abusive. And she -- again, she kind of
9 haltingly acknowledges that sort of in her --

10 THE COURT: Those two motives seem to contradict each
11 other.

12 MR. OLSON: Well, we can let the jury decide what her
13 motives were, Your Honor. I think we should be free to explore
14 all sorts of motives that she may have had to throw dirt on the
15 person she knew was going to be the target of the
16 investigation.

17 THE COURT: She's -- if it's an abusive relationship,
18 she's motivated to lie about your client because Charlie
19 Hernandez is abusive to her? How does that work?

20 MR. OLSON: Again, it deflects away from Charlie
21 Hernandez and what she was doing with him.

22 THE COURT: Why does she have a motive to blame your
23 client and exonerate Charlie Hernandez if Charlie Hernandez is
24 beating her? She's afraid of him?

25 MR. OLSON: She's afraid of him and she's afraid of

1 what her mom's reaction might be.

2 THE COURT: For our purposes, more fundamentally your
3 contention is this isn't under the broad prohibition of 412
4 because it's not getting at coercion, it's getting at motive to
5 lie. You want to show that she's lying, and she has at least
6 two reasons to lie, right?

7 MR. OLSON: Yes.

8 THE COURT: All right. Thank you.

9 MR. OLSON: Let me just add as an umbrella argument
10 that I have as to all of this, all these different categories
11 that you've described, is that because Mr. Jackson is accused
12 of the force, fraud or coercion aspect of this -- this is just
13 very general, and because the government has so many ways of
14 proving that by virtue of the definition of coercion and
15 serious harm, including very subtle ways, modus operandi, the
16 things that we've talked about earlier, because there's so many
17 ways that that can be committed, there is some relevance to
18 know that these women -- young girls were previously involved
19 in prostitution activities, that they were previously
20 trafficked by other people, because that tends to show that by
21 getting in the car in Eugene and traveling to Portland,
22 especially MV4, with her prior experience with
23 Ms. Petrovic, that that -- again, this is not coercive, that
24 this is -- I won't say voluntary, but it's not coercive.

25 THE COURT: My view there, separate from your avenue

1 to show lying, is that while there may be some 401 relevance
2 there -- maybe -- Rule 412 says, well, we don't care. We don't
3 care there's some relevance. You can't do it. It really says
4 there's no relevance, but even if there's a little, Rule 412 is
5 a policy choice, saying we're not going to allow this kind of
6 stuff, and the case law is pretty solid on that.

7 Let me turn to you for responding to this other
8 avenue, not it's not coercive because they've done it before,
9 but here's a good way I want to show that one or more -- MV5 in
10 particular -- is lying. What's your response?

11 MS. MILES: Well, I think it's really a question of
12 balancing the prejudicial effect over the probative value. We
13 certainly don't want to get in the defense's way of impeaching
14 the witness by showing that her story changed over time.
15 That's a perfectly fine avenue for cross-examination. To the
16 extent that she --

17 THE COURT: Which story? Because the story that
18 changed over time, one of them is a story about her being
19 trafficked by Charlie Hernandez.

20 MS. MILES: Right. And there's a difference between
21 indicating that she gave incremental information to the police
22 over time and getting into the details of how that -- what that
23 information actually was. I think that's where the Court
24 really is needed in policing, and that's what 412 asks for.
25 So, of course, there's some avenue of allowing for

1 cross-examination and effective cross-examination, but the
2 cases are very clear that sanitizing the details and omitting
3 some of those details is perfectly within the province of the
4 Court in policing the 412 policy requirements.

5 THE COURT: What details are you talking about? The
6 detail that he trafficked her?

7 MS. MILES: Certainly the detail that he trafficked
8 her. I think that's --

9 THE COURT: She tells multiple stories that alter
10 Charlie Hernandez's role with each telling. So what are you
11 suggesting the jury learn about that? That she had an intimate
12 relationship with him but not that she was being trafficked or
13 what?

14 MS. MILES: She maintains consistently she has never
15 been trafficked by Charlie Hernandez. So the defense is
16 pulling those inferences out of the discovery, but that is not
17 something that MV5 has ever said happened.

18 And her mother also has said that even though she
19 made this report early on, after discussions with MV5, she
20 does not believe that she was being trafficked by Charlie
21 Hernandez. So that's just not factually supported by any of
22 the evidence that the government is aware of.

23 And I think that the *Hughes v. Raines* case, which I
24 believe we've cited, but it's 641 --

25 THE COURT: You cited it.

1 MS. MILES: I have cited it? Okay.

2 That case talks directly about where we're dealing
3 with establishing the probative value of some of these prior
4 acts, where we don't have it proved, and it's purely
5 speculative that probative value declines substantially. And
6 that's the case here as well.

7 THE COURT: Do you wish to be heard further regarding
8 MV5 and Diana Petrovic's intimate relationship and joint
9 activities?

10 MS. MILES: Again, we would ask the Court -- I think
11 that information, to the extent it may be relevant as a motive
12 for MV5 to cover for Ms. Petrovic or something along those
13 lines, showing they have an ongoing relationship is one thing.
14 Letting the defense delve into the sexual nature of it, again
15 because the government has no information to support they are
16 in a sexual relationship or that they are engaging in continued
17 prostitution. Neither of those witnesses has ever said
18 anything to that extent to the government, and has specifically
19 denied it.

20 THE COURT: You're not aware of a good faith basis
21 for asking those questions?

22 MS. MILES: We don't believe there is a good faith
23 basis for asking those questions.

24 THE COURT: You don't believe there's a good faith
25 basis for asking if MV5 and Diana Petrovic had an intimate

1 relationship?

2 MS. MILES: Outside of being forced to do so?

3 THE COURT: Yes.

4 MS. MILES: I'm not aware of a basis for asking that.

5 THE COURT: And you're not aware of any good faith
6 basis for asking, just asking on a good faith basis whether
7 Petrovic prostituted MV5 at any point?

8 MS. MILES: Again, after the charged period?

9 THE COURT: Yes.

10 MS. MILES: No, I'm not aware. I am aware that they
11 have had continued social contact, and I think that that is
12 certainly an avenue that's ripe for cross-examination.

13 THE COURT: All right. Thank you.

14 I'm going to consider the specific evidence regarding
15 the -- at a minimum the statements involving Charlie Hernandez
16 made in this case, and the possibility that something would be
17 allowed to be inquired into. I'll take that under advisement.

18 The evidence that I've described in general about
19 Depree Smith and the idea of the 412 problem it raises, I'm
20 affirming my tentative ruling to keep that out.

21 The evidence of prior prostitution and escorting of
22 complainants in general I'm going to exclude.

23 And I certainly -- assuming a good faith basis for
24 asking, which we will inquire closely more at the time, I will
25 allow some inquiry into that. I agree that there's no reason

1 that specific sexual acts, for example, have to be inquired
2 into, but that seems to me very directly to get at a motive to
3 lie, a classic motive to lie. So I'll probably allow something
4 along those lines. And, quite frankly, you know, if Mr. Olson
5 says he has a good faith basis, then I'm going to take him at
6 his word on that for trial purposes.

7 All right.

8 MR. OLSON: So, Your Honor, may I -- are you moving
9 on from the 412?

10 THE COURT: I am.

11 MR. OLSON: I was hoping to add a few more details,
12 but I can --

13 THE COURT: I can hear more if you give me more at
14 the time that I'm asking you to solidify in the context of
15 trial what it is you think you can ask. I'm keeping out some
16 of it before trial, but the possibility that you can inquire
17 into Petrovic and Hernandez is still on the table.

18 MS. MILES: Your Honor, can I ask a procedural
19 question on that?

20 THE COURT: You can ask one, because I think that's
21 what I'm being asked to remember to ask you about.

22 So we have to have a hearing?

23 MS. MILES: Right. That was my question, I guess.
24 The question I have is whether we have enough of a proffer for
25 the Court to be able to rule that this is not 412 evidence,

1 that it falls outside of 412, or whether it actually qualifies
2 as 412 evidence coming in under the confrontation clause
3 exception, in which case the need for a hearing would be
4 triggered.

5 THE COURT: Well, I think that's solid on the
6 Petrovic testimony. I think that's just classic motive to lie
7 testimony, an extrinsic sort of relationship that creates
8 motive to lie.

9 Hernandez, I don't know enough yet, so we'll have to
10 punt on that and hold a hearing in the middle of trial if we
11 need to.

12 All right. The case has in it some tricky voir dire
13 questions, and I'm going to ask a few of them, not anything
14 like all of them that you've proposed on particularly sex
15 trafficking generally, and race and unconscious bias also.

16 So I will ask some questions. You'll be free to
17 follow up on your own further with questions of the group. So
18 don't think that because I'm not asking a question it's not
19 something you're allowed to ask. You'll be allowed to follow
20 up.

21 Any questions about that from the United States
22 first?

23 MS. MILES: Just out of curiosity, the implicit bias
24 video is shown to the jury at large in the morning; is that
25 right?

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

Plaintiff,

v.

JOHNL JACKSON

Defendant.

JUDGMENT IN A CRIMINAL CASE

Case No.: 3:19-CR-00458-MO-1

USM Number: 81493-065

Per C. Olson,
Defendant's AttorneyAshley Renee Cadotte, Pamela Paaso,
Assistant U.S. Attorney

THE DEFENDANT:

 was found guilty on count(s) 1 ,2, 4, 5, 8, 9 of the Second Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of the following offense(s):

<u>Title, Section & Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18:1594(c) - Conspiracy to Engage in Sex Trafficking	Beginning on or about 8/1/2018 and continuing until 9/30/2018	1sss
18:1591(a)(1), (2), and (b)(2) - Sex Trafficking of a Child	Beginning on or about 8/1/2018 and continuing until 9/6/2018	2sss
18:1591(a)(1), (2), and (b)(1) - Sex Trafficking by Force, Fraud and Coercion	Beginning on or about 8/1/2018 and continuing until 9/6/2018	4sss
18:2423(a) and (e) - Transportation of a Minor with Intent to Engage in Sexual Activity	Beginning on or about 9/3/2018 and continuing until 9/6/2018	5sss
18:1591(a)(1), (a)(2), and (b)(1) - Sex Trafficking by Force, Fraud and Coercion	Beginning on or about 9/6/2018 and continuing until 9/10/2018	8sss
18:2423(a) and (e) - Transportation of a Minor with Intent to Engage in Sexual Activity	Beginning on or about 9/6/2018 and continuing until 9/10/2018	9sss

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on count(s) and is discharged as to such count(s). The Indictment, Superseding Indictment and Count(s) 3, 6, and 7 of the Second Superseding Indictment are dismissed on the motion of the United States. The defendant shall pay a special assessment in the amount of \$100 for each Count 1, 2, 4, 5, 8, and 9 for a total of \$600 payable to the Clerk of the U.S. District Court. (See also the Criminal Monetary Penalties Sheet.)

IT IS ORDERED that the defendant shall 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 shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

July 25, 2022

Date of Imposition of Sentence

Signature of Judicial Officer

Michael W. Mosman, U.S. District Judge

Name and Title of Judicial Officer

July 25, 2022

Date

Appendix 48

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 2 - ImprisonmentDEFENDANT: JOHNL JACKSON
CASE NUMBER: 3:19-CR-00458-MO-1

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IMPRISONMENT

As to Counts 1, 2, 4, 5, 8, and 9 of the Second Superseding Indictment, the defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **200 months** on each count, with the sentence on all counts to be served **concurrently** with each other.

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

1. To be designated at FCI Sheridan to be close to family.
2. To participate in RDAP.

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

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

at _____ on _____.

as notified by the United States Marshal.

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

before _____ on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

The Bureau of Prisons will determine the amount of prior custody that may be credited towards the service of sentence as authorized by Title 18 USC §3585(b) and the policies of the Bureau of Prisons.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By: _____
DEPUTY UNITED STATES MARSHAL

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 3 - Supervised ReleaseDEFENDANT: JOHN L JACKSON
CASE NUMBER: 3:19-CR-00458-MO-1

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years on each count. Counts 1, 2, 4, 5, 8, and 9 of the Second Superseding Indictment.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. You must participate in an approved program for domestic violence. (*check if applicable*)

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

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Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 3A - Supervised ReleaseDEFENDANT: JOHNL JACKSON
CASE NUMBER: 3:19-CR-00458-MO-1

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must submit your person, property, house, residence, vehicle, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
2. You must not communicate, or otherwise interact, with the individuals identified in the presentence report as Minor Victim 4 and Minor Victim 5, either directly or through someone else, without first obtaining the permission of the probation officer.
3. You must not obtain or possess any driver's license, social security number, birth certificate, passport, or any other form of identification in any other name other than your true legal name, without the prior written approval of the probation officer.
4. You must participate in a substance abuse treatment or alcohol abuse treatment program, which may include inpatient treatment, and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The program may include urinalysis testing to determine if you have used drugs or alcohol. You must not attempt to obstruct or tamper with the testing methods.
5. You must submit to substance abuse testing to determine if you have used a prohibited substance. Such testing may include up to twelve (12) urinalysis tests per month. You must not attempt to obstruct or tamper with the testing methods.
6. You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption, except with the prior approval of the probation officer.
7. You must not go to, or remain at any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer. Except as authorized by court order, you must not possess, use or sell marijuana or any marijuana derivative (including THC) in any form (including edibles) or for any purpose (including medical purposes). Without the prior permission of the probation any location where marijuana or marijuana derivatives are dispensed, sold, packaged, or manufactured.
8. You must not use or possess alcohol.
9. You must not knowingly enter any establishment where alcohol is the primary item for sale without first obtaining the permission of the probation officer.
10. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

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Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 3D - Supervised ReleaseDEFENDANT: JOHNL JACKSON
CASE NUMBER: 3:19-CR-00458-MO-1

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11. You must not engage in any form of gambling (including, but not limited to, lotteries, on-line wagering, sports betting) and you must not enter any casino or other establishment where gambling is the primary purpose (e.g., horse race tracks, off-track betting establishments).
12. You must participate in a gambling addiction treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
13. You must participate in a sex offense-specific assessment.
14. You must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
15. You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.
16. You must not have direct contact with any child you know or reasonably should know to be under the age of 18, not including your own children, without the permission of the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18, not including your own children, without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.
17. You must not go to, or remain at, any place where you know children under the age of 18 are likely to be, including parks, schools, playgrounds, and childcare facilities.
18. You must not go to, or remain at, a place for the primary purpose of observing or contacting children under the age of 18.
19. You must not associate with prostitutes and must not frequent areas or places where prostitution is a known activity.
20. You must not frequent a hotel, motel, or other commercial establishment that offers temporary lodging without the prior written permission of the probation officer.
21. You must provide the U.S. Probation Officer with truthful and complete information regarding all computer hardware, software, electronic services, and data storage media to which you have access.
22. You must submit your computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media, to a search. You must not install any encryption software or mechanism on any such computer, device, or data storage media. You must furnish any password or passcode required to access the computer, device, or storage media to the probation officer upon request. You must warn any other people who use these computers or devices capable of accessing the Internet that the devices may be subject to searches pursuant to this condition. A probation officer may conduct a search pursuant to this condition only when reasonable suspicion

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Sheet 3D - Supervised ReleaseDEFENDANT: JOHNL JACKSON
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exists that there is a violation of a condition of supervision and that the computer or device contains evidence of this violation. Any search will be conducted at a reasonable time and in a reasonable manner.

23. You must not possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media except as approved in advance by the probation officer.
24. You must not work in any type of employment without the prior approval of the probation officer.
25. If you are ordered by the government to make child support payments or to make payments to support a person caring for a child, you must make the payments and comply with the other terms of the order.
26. If the judgment imposes a financial penalty, including any fine or restitution, you must pay the financial penalty in accordance with the Schedule of Payments sheet of the judgment. You must also notify the court of any changes in economic circumstances that might affect your ability to pay this financial penalty.
27. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
28. You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.
29. You must not make application for any loan, or enter into any residential or business lease agreement, without the prior approval of the probation officer.
30. You must maintain a single checking account and/or savings account in your own name. You must deposit into this account all income, monetary gains or other pecuniary proceeds, and make use of this account for payment of all personal expenses. You must disclose all other accounts to the probation officer.

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Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 5 - Criminal Monetary PenaltiesDEFENDANT: JOHN L JACKSON
CASE NUMBER: 3:19-CR-00458-MO-1

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth in this judgment.

	<u>Assessment</u> <u>(as noted on Sheet 1)</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA</u> <u>Assessment¹</u>	<u>JVTA</u> <u>Assessment²</u>	<u>TOTAL</u>
TOTALS	\$600	\$0.00	\$0	\$0	\$0	\$ 600.00

The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case* will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

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

If applicable, restitution amount ordered pursuant to plea agreement: \$ _____.

The defendant must pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that

The interest is waived for the fine and/or restitution.

The interest requirement for the fine and/or restitution is modified as follows:

Any payment shall be divided proportionately among the payees named unless otherwise specified.

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Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 10/2019)
Sheet 6 - Schedule of PaymentsDEFENDANT: JOHN L JACKSON
CASE NUMBER: 3:19-CR-00458-MO-1

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SCHEDULE OF PAYMENTSHaving assessed the defendant's ability to pay, payment¹ of the total criminal monetary penalties shall be as follows:

- A. Lump sum payment of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, or E below; or
- B. Payment to begin immediately (may be combined with C, D, or E below); or
- C. If there is any unpaid balance at the time of defendant's release from custody, it shall be paid in monthly installments of not less than \$100, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately upon release from imprisonment.
- D. Any balance at the imposition of this sentence shall be paid in monthly installments of not less than \$ _____, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately.
- E. Special instructions regarding the payment of criminal monetary penalties:

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties, including restitution, shall be due during the period of imprisonment as follows: (1) 50% of wages earned if the defendant is participating in a prison industries program; (2) \$25 per quarter if the defendant is not working in a prison industries program. If the defendant received substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, the defendant shall be required to apply the value of such resources to any restitution or fine still owed, pursuant to 18 USC § 3664(n).

Nothing ordered herein shall affect the government's ability to collect up to the total amount of criminal monetary penalties imposed, pursuant to any existing collection authority.

All criminal monetary penalties, including restitution, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court at the address below, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

Clerk of Court
U.S. District Court - Oregon
1000 S.W. 3rd Ave., Ste. 740
Portland, OR 97204

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

 Joint and Several**Case Number****Defendant and Co-Defendant Names**
(including Defendant number)**Total Amount****Joint and Several Amount****Corresponding Payee, if appropriate** The defendant shall pay the cost of prosecution. The defendant shall pay the following court costs: The defendant shall forfeit the defendant's interest in the following property to the United States:

¹ 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.