

No. _____

**In The
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 2025

DEONTE WOMACK, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

**Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit**

PETITIONER'S APPENDIX (ELECTRONIC FILING)

JEREMY B. LOWREY
Arkansas Bar No. 2002153
Oklahoma Bar No. 15031
Post Office Box 188
West Memphis, Arkansas 72303
(870) 329-4957

ATTORNEY FOR PETITIONER
DEONTE WOMACK

INDEX TO APPENDIX

APPENDIX A

Eighth Circuit Order Denying Petition for Rehearing
Case Number 24-2581, November 19, 2025App. 1

APPENDIX B

United States v. Womack, 154 F.4th 584
(8th Circuit, October 2025)App. 2

APPENDIX C

United States v. Womack, Opinion, Eighth Circuit Court
of Appeals, Case Number 24-2581, August 4, 2025App.12

APPENDIX D

Judgment and Sentence, Case No. 4:20-cr-00045-BSM-1
U.S. Dist. Ct., Eastern Dist. Ark, July 25, 2024.App. 22

APPENDIX E

Ruling by the Trial Court on USSG, Sentencing Transcript in
Case 4:20-cr-00045-BSM-1, July 24, 2024 [excerpt]App.30

APPENDIX F

Ruling by the Trial Court on Sufficiency, Trial Transcript 2in
Case 4:20-cr-00045-BSM-1, June 1, 2023 [excerpts] Rulings
at close of Government’s case and close of evidenceApp.38

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-2581

United States of America

Appellee

v.

Deonte Womack

Appellant

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:20-cr-00045-BSM-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

November 19, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

ID vLex: 1102952992
<http://case-law.vlex.com/vid/united-states-v-womack-1102952992>

United States v. Womack

Docket Number: 24-2581

Decision Date: 01 October 2025

Citation: United States v. Womack, 154 F.4th 584 (8th Cir. 2025) 

Parties: UNITED STATES of America, Plaintiff - Appellee v. Deonte WOMACK, Defendant - Appellant

Court: U.S. Court of Appeals — Eighth Circuit

154 F.4th 584

UNITED STATES of America, Plaintiff - Appellee

v.

Deonte WOMACK, Defendant - Appellant

No. 24-2581

United States Court of Appeals, Eighth Circuit

APPENDIX 2

Submitted: June 13, 2025

Filed: October 1, 2025

154 F.4th 586

Appeal from United States District Court for the Eastern District of Arkansas - Central Counsel who presented argument on behalf of the appellant and appeared on the brief was Jeremy B. Lowrey, of Little Rock, AR.

Counsel who presented argument on behalf of the appellee and appeared on the brief was Kristin Huntington Bryant, AUSA, of Little Rock, AR. The following attorney(s) appeared on the appellee brief; Leslie Bright, AUSA, of Little Rock, AR.

154 F.4th 587

Before COLLOTON, Chief Judge, ARNOLD and GRUENDER, Circuit Judges.

GRUENDER, Circuit Judge.

A jury convicted Deonte Womack of two counts of sex trafficking by force, fraud, or coercion. See 18 U.S.C. § 1591(a). The district court¹ sentenced him to 235 months' imprisonment. Womack appeals, challenging the admission of testimony from one of his victims, the denial of his proposed lesser included offense jury instruction, the denial of his motion for judgment of acquittal due to insufficient evidence, and the calculation of his base offense level at sentencing. We affirm.

I. Background

On July 23, 2019, the Little Rock, Arkansas Police Department ("LRPD") executed a sting operation targeting illegal prostitution. An undercover officer arranged to meet with A.B., a woman working as a prostitute for Womack, in a hotel room, and upon arrival handed A.B. \$400 in cash. After A.B. confirmed that she would have sex with the undercover officer in return for the payment, other LRPD officers entered the room and arrested her. Following her arrest, A.B. protected Womack by declining to identify him in her statements to the LRPD.

Months later, in late October 2019, after having suffered a serious beating by Womack, A.B. changed her mind and sought help from law enforcement. She reached out to the LRPD and explained that she worked for Womack as a prostitute. Soon after, the LRPD brought in the FBI, which opened an investigation into Womack. The FBI interviewed A.B. and also J.G. and T.S., two other women in Womack's prostitution ring.

During its investigation, the FBI learned that Womack's ring included at least twelve women. He handled administrative matters such as buying lingerie, posting online advertisements on escort sites, driving women to their "dates," and handling the money. He also provided housing for the women, whether at hotels, Airbnbs, or homes owned by Womack or his family. For some of the women, Womack retained all of the money they earned, and he compensated them through housing and by paying their bills. Others split up to half of their earnings with Womack.

A.B., J.G., and T.S. each recounted to the FBI that Womack physically abused them. Incidents included Womack violently throwing them onto the ground or across a room and choking them to the point of unconsciousness. Womack also stalked, harassed, and threatened physical violence against women who tried to leave his prostitution ring, which caused them to be afraid to leave.

Following the FBI's investigation, Womack was arrested on February 6, 2020. The indictment charged him with four counts: three counts of sex trafficking by force, fraud, or coercion—one count relating to each of A.B., J.G., and T.S.—see 18 U.S.C. § 1591(a), and one count of witness intimidation, see *id.* § 1512(b)(1). Womack pleaded not guilty, and the case proceeded to trial.

At trial, A.B., J.G., and T.S. each testified about their experiences working as prostitutes for Womack. The Government sought to introduce additional testimony from a fourth woman, C.C., whose prostitution for Womack was not part of the

154 F.4th 588

charged conduct. During the pretrial conference, the Government explained that it expected Womack to defend himself by arguing that J.G., A.B., and T.S. voluntarily engaged in prostitution—thus, he did not force, threaten, or coerce them. The Government sought to counter this narrative and previewed that C.C. would testify that she affirmatively told Womack that she did not want to prostitute but was compelled by

Womack's use and threats of force and coercion. C.C.'s testimony, according to the Government, would be admissible under Federal Rule of Evidence 404(b)(2) to prove Womack's knowledge, intent, and motive to use force, threats of force, fraud, or coercion. Womack responded that C.C.'s testimony would constitute inadmissible evidence of his other bad acts. See Fed. R. Evid. 404(b)(1). The district court decided to allow C.C. to testify, but read a limiting instruction to the jury, directing them to consider her testimony "only for the limited purpose of deciding whether Mr. Womack had the state of mind or intent necessary to commit the crime charged in the indictment." C.C. testified that Womack forced her to have sex with men in exchange for money, posted advertisements without her permission, and confiscated her phone, ID, and other belongings to prevent her from leaving.

At the close of the Government's evidence, Womack moved for judgment of acquittal, which the district court granted with respect to one of the counts charging him with sex trafficking by force, fraud, or coercion (the one relating to T.S.) and the count charging him with witness intimidation. Womack then testified in his own defense and, after the close of all evidence, renewed his motion for judgment of acquittal as to the two remaining counts of sex trafficking by force, fraud, or coercion (relating to A.B. and J.G.). The district court denied the motion.

Before closing arguments, the district court read instructions to the jury. Womack requested that the district court instruct the jury on a lesser included offense of interstate transportation of an individual to engage in prostitution. See 18 U.S.C. § 2421. The district court declined to submit Womack's proposed lesser included offense instruction. The jury ultimately returned guilty verdicts on the two remaining counts.

At sentencing, Womack objected to the base offense level calculation in the Presentence Investigation Report ("PSR"). The PSR calculated Womack's base offense level as 34 pursuant to the sentencing guidelines. See U.S.S.G. § 2G1.1(a)(1). Womack argued that § 2G1.1(a)(1) did not apply to him, and that his base offense level should instead have been 14. See *id.* § 2G1.1(a)(2). The district court overruled Womack's objection. The guidelines set an advisory range of 235-293 months' imprisonment, and the district court sentenced Womack to 235 months' imprisonment followed by 5 years of supervised release. Following entry of judgment, Womack timely appealed.

II. Discussion

Womack makes several challenges on appeal. First, he argues that the district court erred in admitting C.C.'s testimony under Rule 404(b). Second, he contends that the district court erred in declining to give his proffered lesser included offense jury instruction. Third, he challenges the district court's denial of his motion for judgment of acquittal on the two counts of sex trafficking by force, fraud, or coercion submitted to the jury, arguing that the evidence was insufficient to support his conviction. And fourth, he disputes the district court's calculation of his base offense level at sentencing. We address each in turn.

154 F.4th 589

A. Admission of Testimony

Womack challenges the district court's decision to admit C.C.'s testimony, arguing that because the testimony concerned conduct for which Womack was not charged, it constituted inadmissible evidence of his other bad acts and propensity to engage in the kind of conduct C.C. described. See Fed. R. Evid. 404(b). "We review the district court's evidentiary rulings for an abuse of discretion, giving great deference to the district court's balancing of the probative value and prejudicial impact of the evidence." *United States v. Wright*, 993 F.3d 1054, 1061 (8th Cir. 2021) (internal quotation marks omitted).

"Rule 404(b) permits the admission of evidence of a criminal defendant's 'crime, wrong, or act' to prove the defendant's 'motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.'" *United States v. Atkins*, 52 F.4th 745, 753 (8th Cir. 2022) (quoting Fed. R. Evid. 404(b)). "Such evidence must be (1) relevant to a material issue; (2) similar in kind and not overly remote in time to the crime charged; and (3) supported by sufficient evidence." *Id.* (internal quotation marks omitted). The potential prejudice of the evidence must also not substantially outweigh its probative value. *Id.* (quoting Fed. R. Evid. 403).

C.C.'s testimony met each criterion. First, it was relevant to a material issue. A core part of Womack's defense at trial was that A.B. and J.G. voluntarily worked as prostitutes. C.C.'s testimony that Womack forced her to have sex with other men for money—including descriptions of how he took her phone, ID, and other belongings to prevent her from leaving his orbit—was therefore directly relevant to the material issue of whether Womack intended to use force, fraud, or coercion against the women. Second, C.C.'s experiences were similar in kind and close in time to the crimes charged. C.C. prostituted

for Womack during the time period outlined in the indictment. Third, C.C.'s testimony was supported by sufficient evidence. Not only did she testify at Womack's trial about her experiences, but both she and her mother were in contact with the FBI about the abuse as far back as 2017. Finally, the potential unfair prejudice to Womack did not substantially outweigh the probative value of C.C.'s testimony. We typically do not find that Rule 404(b) evidence "was unfairly prejudicial when the district court gave an appropriate limiting instruction, instructing the jury not to use the evidence as proof of the acts charged in the indictment." *United States v. Cameron*, 99 **F.4th** 432, 436 (8th Cir. 2024), cert. denied, — U.S. —, 145 S. Ct. 314, — L.Ed.2d — (2024). The district court gave an appropriate limiting instruction here, and Womack fails to point to anything in the record that suggests that the testimony was overly prejudicial. Because C.C.'s testimony was proper under Rule 404(b), the district court did not abuse its discretion in admitting her testimony.

B. Jury Instructions

We next turn to the district court's denial of Womack's proposed lesser included offense jury instruction. Generally, a "defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater." *United States v. Parker*, 993 F.3d 595, 604 (8th Cir. 2021). At trial, Womack proposed a jury instruction for the lesser included offense of interstate transportation for prostitution, see 18 U.S.C. § 2421, relating to a 2019 trip he took to Las Vegas along with several of the women.

"We review the denial of a lesser-included offense instruction for abuse of

¹⁵⁴ **F.4th** 590

discretion." *Parker*, 993 F.3d at 604. A defendant is entitled to a lesser included offense instruction when:

- (1) a proper request is made;
- (2) the elements of the lesser offense are identical to part of the elements of the greater offense;
- (3) there is some evidence which would justify conviction of a lesser offense;
- (4) the proof on the element or elements differentiating the two crimes is sufficiently in dispute that the jury may consistently find the defendant innocent of the greater and guilty of the lesser included offense; and
- (5) there is mutuality, i.e., a charge may be demanded by either the prosecution or defense.

Id. n.5. Womack's proffered lesser included offense instruction does not meet the second requirement—that the corresponding elements of the lesser and greater offenses be identical. Section 2421 makes it a crime to "knowingly transport[] any individual in interstate or foreign commerce . . . with intent that such individual engage in prostitution." 18 U.S.C. § 2421(a). Section 1591(a) makes it a crime to "knowingly," "in or affecting interstate or foreign commerce, . . . recruit[], entice[], harbor[], transport[], provide[], obtain[], advertise[], maintain[], patronize[], or solicit[] by any means a person" with knowledge or reckless disregard of the fact "that means of force, threats of force, fraud, coercion . . . or any combination of such means will be used to cause the person to engage in a commercial sex act." Id. § 1591(a). The elements of § 2421(a) are not identical to the corresponding elements of § 1591(a). The mens rea requirements of the statutes are different: § 2421(a) requires that the offender "inten[d]" to have the individual engage in prostitution, whereas § 1591(a) requires only "know[ledge]" or "reckless disregard." Because § 2421(a) contains an element that § 1591(a) does not, the district court did not abuse its discretion by rejecting Womack's proffered lesser included offense jury instruction.²

C. Sufficiency of the Evidence

The district court granted judgment of acquittal on one of the sex trafficking counts and the witness intimidation count, but Womack challenges the district court's subsequent denial of his motion for judgment of acquittal on the two remaining sex trafficking counts. He argues that there was insufficient evidence that he used "force, threats of force," or "coercion" to "cause" A.B. and J.G. to engage in prostitution. See 18 U.S.C. § 1591(a). "We review de novo the sufficiency of the evidence, viewing the evidence in the light most favorable to the jury verdict and giving the verdict the benefit of all reasonable inferences." *United States v. Foard*, 108 **F.4th** 729, 735 (8th Cir. 2024). "We reverse only if no reasonable jury could have found the defendant guilty beyond a reasonable doubt." Id. "[A] victim's testimony alone is sufficient to persuade a reasonable jury of the defendant's guilt beyond a reasonable doubt." Id. (alteration in original).

Here, the Government presented evidence sufficient for a reasonable jury to conclude beyond a reasonable doubt that Womack used force and threats of force to coerce A.B. and J.G. into working as prostitutes. Section 1591 defines "coercion" to include "threats

of serious harm to . . . any person." 18 U.S.C. § 1591(e)(2). "Serious harm," in turn, includes "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm,

¹⁵⁴ **F.4th** 591

that is sufficiently serious . . . to compel a reasonable person . . . to perform or to continue performing commercial sexual activity in order to avoid incurring that harm." *Id.* § 1591(e)(5). Both A.B. and J.G. testified to having suffered physical abuse by Womack on multiple occasions. A.B. testified that one time she packed her belongings in an attempt to leave Womack, and he responded by tossing her across the room and striking her, causing bruises. A.B. corroborated her testimony with photographs that showed her injuries. She also told law enforcement that she continued working for Womack because she was afraid of what he would do if she stopped. Similarly, J.G. testified that, one time after she tried to leave Womack, he choked her to the point of unconsciousness, leaving her "terrified" and disinclined to try to leave again. When she tried to leave on other occasions, Womack stalked and harassed her and her family members until she returned. The jury also heard testimony that Womack exerted considerable control over the women, including posting online advertisements, providing them with housing, and handling their money—taking as much as all of the earnings of some women. Womack's degree of control over the women's lives led both A.B. and J.G. to feel "trapped" in his orbit. A reasonable jury could conclude from this evidence that Womack used force, threats of force, or coercion to cause A.B. and J.G. to engage in prostitution. The district court did not err in denying Womack's motion for judgment of acquittal.

D. Sentencing

Finally, we address Womack's challenge to the calculation of his base offense level. We review the district court's construction and application of the sentencing guidelines *de novo*. *United States v. Edwards*, 111 **F.4th** 919, 929 (8th Cir. 2024). Under the guidelines, the base offense level for promoting a commercial sex act is "34, if the offense of conviction is 18 U.S.C. § 1591(b)(1)," or 14 if otherwise. U.S.S.G. § 2G1.1(a). In an apparent contradiction, § 1591(b)(1) does not establish an "offense" but provides the punishment for certain offenses committed under § 1591(a).

Over Womack's objection, the district court applied a base offense level of 34. Womack contends that because his "offense of conviction" is § 1591(a)—not § 1591(b)(1)—his base offense level should have been 14. See U.S.S.G. § 2G1.1(a). He asserts that—even though we might find § 2G1.1(a) to be a "misnomer"—an ambiguity exists that we should interpret in his favor. "We employ basic rules of statutory construction when interpreting the Guidelines," *United States v. Stimac*, 40 **F.4th** 876, 880 (8th Cir. 2022) (citation modified), and therefore should attempt to construe § 2G1.1 and § 1591 in harmony. See *Jones v. Hendrix*, 599 U.S. 465, 478, 143 S.Ct. 1857, 216 L.Ed.2d 471 (2023).

We reject Womack's wooden interpretation of "offense of conviction," which would render § 2G1.1(a) meaningless. Section 1591(b)(1) does not contain an offense on its own. Rather, it provides for a fine and a mandatory minimum prison sentence as punishment for certain offenses contained in § 1591(a). Therefore, when § 2G1.1(a) describes § 1591(b)(1) as the "offense of conviction," it refers to those § 1591(a) offenses that are punishable pursuant to § 1591(b)(1).³ Cf. *United*

¹⁵⁴ **F.4th** 592

States v. Carter, 960 F.3d 1007, 1014 (8th Cir. 2020) (declining to "read § 2G1.1 in isolation" and finding that a conspiracy conviction under 18 U.S.C. § 1594(c) was subject to a base offense level of 34 under 2G1.1(a)). Therefore, we find no ambiguity, and the district court did not err by applying a base offense level of 34, as provided in § 2G1.1(a).

III. Conclusion

For the foregoing reasons, we affirm.

Footnotes:

¹ The Honorable Brian S. Miller, United States District Judge for the Eastern District of Arkansas.

² Because Womack's proffered lesser included offense instruction fails to satisfy the second prong, we need not address, and therefore do not decide, whether the other four prongs are met.

3· Womack does not raise, and we therefore need not address, whether § 1591(a) might include any offenses for which a punishment is not provided under § 1591(b)(1). See *Jacam Chemical Co. 2013, LLC v. Shepard*, 101 **F.4th** 954, 960 n.2 (8th Cir. 2024) (finding party abandoned argument by failing to adequately explain it). Cf. *United States v. Todd*, 627 F.3d 329, 334-35 (9th Cir. 2010).

ID vLex: 1088466396
<http://case-law.vlex.com/vid/united-states-v-womack-1088466396>

United States v. **Womack**

Docket Number: 24-2581

Decision Date: 04 August 2025

Citation: United States v. Womack, 24-2581 (8th Cir. Aug 04, 2025) 

Parties: United States of America Plaintiff-Appellee v. Deonte Womack Defendant-Appellant

Court: U.S. Court of Appeals — Eighth Circuit

1

United States of America Plaintiff-Appellee v. Deonte Womack Defendant-Appellant

No. 24-2581

United States Court of Appeals, Eighth Circuit

August 4, 2025

Submitted: June 13, 2025

Appeal from United States District Court for the Eastern District of Arkansas - Central
Before COLLOTON, Chief Judge, ARNOLD and GRUENDER, Circuit Judges.

GRUENDER, CIRCUIT JUDGE

A jury convicted **Deonte Womack** of two counts of sex trafficking by force, fraud, or coercion. *See* 18 U.S.C. § 1591(a). The district court sentenced him to 235 months' imprisonment. **Womack** appeals, challenging the admission of testimony from one of his victims, the denial of his proposed lesser included offense jury instruction, the denial of his motion for judgment of acquittal due to insufficient evidence, and the calculation of his base offense level at sentencing. We affirm with *2 respect to all but the calculation of his base offense level, and 2 we remand for resentencing.

I. Background

On July 23, 2019, the Little Rock, Arkansas Police Department ("LRPD") executed a sting operation targeting illegal prostitution. An undercover officer arranged to meet with A.B., a woman working as a prostitute for **Womack**, in a hotel room, and upon arrival handed A.B. \$400 in cash. After A.B. confirmed that she would have sex with the undercover officer in return for the payment, other LRPD officers entered the room and arrested her. Following her arrest, A.B. protected **Womack** by declining to identify him in her statements to the LRPD.

Months later, in late October 2019, after having suffered a serious beating by **Womack**, A.B. changed her mind and sought help from law enforcement. She reached out to the LRPD and explained that she worked for **Womack** as a prostitute. Soon after, the LRPD brought in the FBI, which opened an investigation into **Womack**. The FBI interviewed A.B. and also J.G. and T.S., two other women in **Womack**'s prostitution ring.

During its investigation, the FBI learned that **Womack**'s ring included at least twelve women. He handled administrative matters such as buying lingerie, posting online advertisements on escort sites, driving women to their "dates," and handling the money. He also provided housing for the women, whether at

hotels, Airbnbs, or homes owned by **Womack** or his family. For some of the women, **Womack** retained all of the money they earned, and he compensated them through housing and by paying their bills. Others split up to half of their earnings with **Womack**.

A.B., J.G., and T.S. each recounted to the FBI that **Womack** physically abused them. Incidents included **Womack** violently throwing them onto the ground or across a room and choking them to the point of unconsciousness. **Womack** also *3 stalked, harassed, and threatened physical violence against women who tried 3 to leave his prostitution ring, which caused them to be afraid to leave.

Following the FBI's investigation, **Womack** was arrested on February 6, 2020. The indictment charged him with four counts: three counts of sex trafficking by force, fraud, or coercion-one count relating to each of A.B., J.G., and T.S.-see 18 U.S.C. § 1591(a), and one count of witness intimidation, see *id.* § 1512(b)(1). **Womack** pleaded not guilty, and the case proceeded to trial.

At trial, A.B., J.G., and T.S. each testified about their experiences working as prostitutes for **Womack**. The Government sought to introduce additional testimony from a fourth woman, C.C., whose prostitution for **Womack** was not part of the charged conduct. During the pretrial conference, the Government explained that they expected **Womack** to defend himself by arguing that J.G., A.B., and T.S. voluntarily engaged in prostitution-thus, he did not force, threaten, or coerce them. The Government sought to counter this narrative and previewed that C.C. would testify that she affirmatively told **Womack** that she did not want to prostitute but was compelled by **Womack**'s use and threats of force and coercion. C.C.'s testimony, according to the Government, would be admissible under Federal Rule of Evidence 404(b)(2) to prove **Womack**'s knowledge, intent, and motive to use force, threats of force, fraud, or coercion. **Womack** responded that C.C.'s testimony would constitute inadmissible evidence of his other bad acts. See Fed.R.Evid. 404(b)(1). The district court decided to allow C.C. to testify, but read a limiting instruction to the jury, directing them to consider her testimony "only for the limited purpose of deciding whether Mr. **Womack** had the state of mind or intent necessary to commit the crime charged in the

indictment." C.C. testified that **Womack** forced her to have sex with men in exchange for money, posted advertisements without her permission, and confiscated her phone, ID, and other belongings to prevent her from leaving.

At the close of the Government's evidence, **Womack** moved for judgment of acquittal, which the district court granted with respect to one of the counts charging him with sex trafficking by force, fraud, or coercion (the one relating to T.S.) and *4 the count charging him with witness intimidation. **Womack** then 4 testified in his own defense and, after the close of all evidence, renewed his motion for judgment of acquittal as to the two remaining counts of sex trafficking by force, fraud, or coercion (relating to A.B. and J.G.). The district court denied the motion.

Before closing arguments, the district court read instructions to the jury.

Womack requested that the district court instruct the jury on a lesser included offense of interstate transportation of an individual to engage in prostitution. *See* 18 U.S.C. § 2421. The district court declined to submit Womack's proposed lesser included offense instruction. The jury ultimately returned guilty verdicts on the two remaining counts.

At sentencing, Womack objected to the base offense level calculation in the Presentence Investigation Report ("PSR"). The PSR calculated Womack's base offense level as 34 pursuant to the sentencing guidelines. *See* U.S.S.G. § 2G1.1(a)(1). Womack argued that § 2G1.1(a)(1) did not apply to him, and that his base offense level should instead have been 14. *See id.* § 2G1.1(a)(2). The district court overruled Womack's objection. The guidelines set an advisory range of 235293 months' imprisonment, and the district court sentenced Womack to 235 months' imprisonment followed by five years of supervised release. Following entry of judgment, Womack timely appealed.

II. Discussion

Womack makes several challenges on appeal. First, he argues that the district court erred in admitting C.C.'s testimony under Rule 404(b). Second, he contends that the district court erred in declining to give his proffered lesser included offense jury instruction. Third, he challenges the district court's denial of his

motion for judgment of acquittal on the two counts of sex trafficking by force, fraud, or coercion submitted to the jury, arguing that the evidence was insufficient to support his conviction. And fourth, he disputes the district court's calculation of his base offense level at sentencing. We address each in turn. *5 5

A. Admission of Testimony

Womack challenges the district court's decision to admit C.C.'s testimony, arguing that because the testimony concerned conduct for which Womack was not charged, it constituted inadmissible evidence of his other bad acts and propensity to engage in the kind of conduct C.C. described. *See* Fed.R.Evid. 404(a) and (b). "We review the district court's evidentiary rulings for an abuse of discretion, giving great deference to the district court's balancing of the probative value and prejudicial impact of the evidence." *United States v. Wright*, 993 F.3d 1054, 1061 (8th Cir. 2021) (internal quotation marks omitted).

"Rule 404(b) permits the admission of evidence of a criminal defendant's 'crime, wrong, or act' to prove the defendant's 'motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.'" *United States v. Atkins*, 52 F.4th 745, 753 (8th Cir. 2022) (quoting Fed.R.Evid. 404(b)). "Such evidence must be (1) relevant to a material issue; (2) similar in kind and not overly remote in time to the crime charged; and (3) supported by sufficient evidence." *Id.* (internal quotation marks omitted). The potential prejudice of the evidence must also not substantially outweigh its probative value. *Id.* at 753 (quoting Fed.R.Evid. 403).

C.C.'s testimony met each criterion. First, it was relevant to a material issue. A core part of Womack's defense at trial was that A.B. and J.G. voluntarily worked as prostitutes. C.C.'s testimony that Womack forced her to have sex with other men for money-including descriptions of how he took her phone, ID, and other belongings to prevent her from leaving his orbit-was therefore directly relevant to the material issue of whether Womack used force, fraud, or coercion against the women. Second, C.C.'s experiences were similar in kind and close in time to the crimes charged. C.C. prostituted for Womack during the time period outlined in the indictment. Third, C.C.'s testimony was supported by sufficient evidence. Not only did she testify at Womack's trial about her experiences, but both she and her

mother were in contact with the FBI about the abuse as far back as 2017. Finally, the *6 potential unfair prejudice to Womack did not substantially outweigh the 6 probative value of C.C.'s testimony. We typically do not find that Rule 404(b) evidence "was unfairly prejudicial when the district court gave an appropriate limiting instruction, instructing the jury not to use the evidence as proof of the acts charged in the indictment." *United States v. Cameron*, 99 F.4th 432, 436 (8th Cir. 2024), *cert. denied*, 145 S.Ct. 314 (2024). The district court gave an appropriate limiting instruction here, and Womack fails to point to anything in the record that suggests that the testimony was overly prejudicial. Because C.C.'s testimony was proper under Rule 404(b), the district court did not abuse its discretion in admitting her testimony.

B. Jury Instructions

We next turn to the district court's denial of Womack's proposed lesser included offense jury instruction. Generally, a "defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater." *United States v. Parker*, 993 F.3d 595, 604 (8th Cir. 2021). At trial, Womack proposed a jury instruction for the lesser included offense of interstate transportation for prostitution, *see* 18 U.S.C. § 2421, relating to a 2019 trip he took to Las Vegas along with several of the women.

"We review the denial of a lesser-included offense instruction for abuse of discretion." *Parker*, 993 F.3d at 604. A defendant is entitled to a lesser included offense instruction when:

(1) a proper request is made; (2) the elements of the lesser offense are identical to part of the elements of the greater offense; (3) there is some evidence which would justify conviction of a lesser offense; (4) the proof on the element or elements differentiating the two crimes is sufficiently in dispute that the jury may consistently find the defendant innocent of the greater and guilty of the lesser included *7 offense; and (5) there is mutuality, i.e., a charge may be demanded by either the prosecution or defense.

Id. n.5. Womack's proffered lesser included offense instruction does not meet the second requirement—that the corresponding elements of the lesser and greater offenses be identical. Section 2421 makes it a crime to "knowingly transport[] any

individual in interstate or foreign commerce . . . with intent that such individual engage in prostitution." 18 U.S.C. § 2421(a). Section 1591(a) makes it a crime to "knowingly," "in or affecting interstate or foreign commerce, . . . recruit[], entice[], harbor[], transport[], provide[], obtain[], advertise[], maintain[], patronize[], or solicit[] by any means a person" with knowledge or reckless disregard of the fact "that means of force, threats of force, fraud, coercion . . . or any combination of such means will be used to cause the person to engage in a commercial sex act." *Id.* § 1591(a). The elements of § 2421 (a) are not identical to the corresponding elements of § 1591(a). First, "knowingly transporting] any individual in interstate or foreign commerce," *id.* § 2421(a), is distinct from sex trafficking "in or affecting interstate or foreign commerce" without the element of transporting the person, *id.* § 1591(a). Second, the *mens rea* requirements of the statutes are different: § 2421 (a) requires that the offender "inten[d]" to have the individual engage in prostitution, whereas § 1591(a) requires only "know[ledge]" or "reckless disregard." Because § 2421(a) contains elements that § 1591(a) does not, the district court did not abuse its discretion by rejecting Womack's proffered lesser included offense jury instruction.^[1]

C. Sufficiency of the Evidence

The district court granted judgment of acquittal on one of the sex trafficking counts and the witness intimidation count, but Womack challenges the district court's subsequent denial of his motion for judgment of acquittal on the two remaining sex trafficking counts. He argues that there was insufficient evidence that *8 he used "force, threats of force," or "coercion" to "cause" A.B. and J.G. to 8 engage in prostitution. *See* 18 U.S.C. § 1591(a). "We review de novo the sufficiency of the evidence, viewing the evidence in the light most favorable to the jury verdict and giving the verdict the benefit of all reasonable inferences." *United States v. Foard*, 108 F.4th 729, 735 (8th Cir. 2024). "We reverse only if no reasonable jury could have found the defendant guilty beyond a reasonable doubt." *Id.* "[A] victim's testimony alone is sufficient to persuade a reasonable jury of the defendant's guilt beyond a reasonable doubt." *Id.* (alteration in original).

Here, the Government presented evidence sufficient for a reasonable jury to conclude beyond a reasonable doubt that Womack used force and threats of force to coerce A.B. and J.G. into working as prostitutes. Section 1591 defines "coercion" to include "threats of serious harm to . . . any person." 18 U.S.C. § 1591(e)(2). "Serious harm," in turn, includes "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious . . . to compel a reasonable person . . . to perform or to continue performing commercial sexual activity in order to avoid incurring that harm." *Id.* § 1591(e)(5). Both A.B. and J.G. testified to having suffered physical abuse by Womack on multiple occasions. A.B. testified that one time she packed her belongings in an attempt to leave Womack, and he responded by tossing her across the room and striking her, causing bruises. A.B. corroborated her testimony with photographs that showed her injuries. She also told law enforcement that she continued working for Womack because she was afraid of what he would do if she stopped. Similarly, J.G. testified that, one time after she tried to leave Womack, he choked her to the point of unconsciousness, leaving her "terrified" and disinclined to try to leave again. When she tried to leave on other occasions, Womack stalked and harassed her and her family members until she returned. The jury also heard testimony that Womack exerted considerable control over the women, including posting online advertisements, providing them with housing, and handling their money-taking as much as all of the earnings of some women. Womack's degree of control over the women's lives led both A.B. and J.G. to feel "trapped" in his orbit. A reasonable jury could conclude from this evidence that Womack used force, threats of force, or *9 coercion to cause A.B. 9 and J.G. to engage in prostitution. The district court did not err in denying Womack's motion for judgment of acquittal.

D. Sentencing

Finally, we address Womack's challenge to the calculation of his base offense level. The PSR calculated a base offense level of 34, which the district court applied over Womack's objection. "We review the district court's . . . construction and application of the sentencing guidelines *de novo*." *United States v. Edwards*, 111 F.4th 919, 929 (8th Cir. 2024).

Under the guidelines, the base offense level for promoting a commercial sex act is 34 "if the offense of conviction is 18 U.S.C. § 1591(b)(1)," or 14 if otherwise. U.S.S.G. § 2G1.1(a). The Government argues that the higher base offense level was warranted because the jury's verdict matched the language of § 1591(b)(1). Indeed, subsections 1591(a) and (b)(1) include similar language referring to "means of force," "threats of force," "fraud," and "coercion," and the jury found Womack guilty of "sex trafficking by force, fraud, or coercion." However, the two subsections are not identical. Subsection (a) makes it a crime to "know[]," or act "in reckless disregard of the fact, that means of force, threats of force, fraud, [or] coercion . . . will be used to cause the person to engage in a commercial sex act." 18 U.S.C. § 1591(a). Subsection (b)(1) applies a mandatory minimum 15-year prison sentence for violators of § 1591(a) "if the offense was effected by means of force, threats of force, fraud, or coercion." *Id.* § 1591(b)(1). Womack's correct base offense level under the guidelines depends on whether the jury's verdict supports a conviction under (b)(1). *See* U.S.S.G. § 2G1.1(a).

It does not. Womack was indicted for, and convicted of, violating § 1591(a). Neither the indictment nor the jury's verdict form mentioned § 1591(b)(1). The indictment specified only § 1591(a) as the charged offense and tracked that subsection's language of "know[ledge]" and "reckless disregard," language not shared by (b)(1). *See* 18 U.S.C. § 1591(a) and (b)(1). The jury neither convicted *10 Womack of violating (b)(1), nor made a specific finding that Womack's "was 10 effected by means of force, threats of force, fraud, or coercion," in violation of (b) (1). *See id.* § 1591(b)(1). Because Womack's offense of conviction was not § 1591(b)(1), his base offense level should have been 14, not 34. *See* U.S.S.G. § 2G1.1(a).^[2]

III. Conclusion

For the foregoing reasons, we affirm Womack's conviction and remand for resentencing.

[¹] Because Womack's proffered lesser included offense instruction fails to satisfy the second prong, we need not address, and therefore do not decide, whether the other four prongs are met.

[²] The Government points to *United States v. Carter*, 960 F.3d 1007 (8th Cir. 2020), and *United States v. Unpradit*, 35 F.4th 615 (8th Cir. 2022), to argue that § 2G1.1(a) applies a base offense level of 34 to violations of § 1591(a). However, the respective defendants in both of those cases were also charged with and convicted of violating (b)(1). See *Carter*, 960 F.3d at 1014; *United States v. Ruttanamongkongul*, 2019 WL 719203 at *1 (D. Minn. Feb. 20, 2019) (unpublished) (quoting from the indictment charging several of the co-defendants in *Unpradit* and listing both § 1591(a) and (b) (1) as underlying offenses), *aff'd sub nom. Unpradit*, 35 F.4th 615. Accordingly, neither case stands for the proposition that those convicted of § 1591(a), but not (b) (1), receive a base offense level of 34 pursuant to § 2G1.1(a) of the guidelines.

JUL 25 2024

UNITED STATES DISTRICT COURT

Eastern District of Arkansas

TAMMY H. DOWNS, CLERK

By: E. WADDE DEP CLERK

UNITED STATES OF AMERICA)

v.)

DEONTE WOMACK)

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:20-CR-00045-BSM-1

USM Number: 33201-009

Geoffrey Kearney
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) 1 and 2 of the Superseding Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1591(a)	Sex Trafficking by Force, Fraud, or Coercion (Class A Felony)	1/16/2020	1s

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

The defendant has been found not guilty on count(s) _____

Count(s) Count 1 of Ind, 3 & 4 of Supersed is are dismissed.

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

7/24/2024
Date of Imposition of Judgment

Brian S Miller
Signature of Judge

Brian S. Miller, United States District Judge
Name and Title of Judge

7/25/2024
Date

DEFENDANT: DEONTE WOMACK
CASE NUMBER: 4:20-CR-00045-BSM-1

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1591(a)	Sex Trafficking by Force, Fraud, or Coercion (Class A Felony)	11/6/2019	2s

DEFENDANT: DEONTE WOMACK
CASE NUMBER: 4:20-CR-00045-BSM-1

IMPRISONMENT

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

TWO HUNDRED THIRTY-FIVE (235) MONTHS ON EACH COUNT TO RUN CONCURRENTLY WITH EACH OTHER

The court makes the following recommendations to the Bureau of Prisons:
Imprisonment recommended at Texarkana FCI. If Texarkana is not available, imprisonment recommended at Forrest City FCC.

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

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

at _____ a.m. p.m. on _____ .

as notified by the United States Marshal.

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

before 12 p.m. on _____ .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DEONTE WOMACK
CASE NUMBER: 4:20-CR-00045-BSM-1

SUPERVISED RELEASE

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

FIVE (5) YEARS ON EACH COUNT TO RUN CONCURRENTLY WITH EACH OTHER

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 the location where 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.

DEFENDANT: DEONTE WOMACK
CASE NUMBER: 4:20-CR-00045-BSM-1**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 _____

DEFENDANT: DEONTE WOMACK
CASE NUMBER: 4:20-CR-00045-BSM-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a substance abuse treatment program under the guidance and supervision of the probation office. The program may include drug and alcohol testing, outpatient counseling, and residential treatment. You must abstain from the use of alcohol during treatment. You must pay for the cost of treatment at the rate of \$10 per session, with the total cost not to exceed \$40 per month, based on ability to pay as determined by the probation office. If you are financially unable to pay for the cost of treatment, the co-pay requirement will be waived.
2. You must participate in a mental health treatment program under the guidance and supervision of the probation office. You must pay for the cost of treatment at the rate of \$10 per session, with the total cost not to exceed \$40 per month, based on ability to pay as determined by the probation office. In the event you are financially unable to pay for the cost of treatment, the co-pay requirement will be waived.
3. You must participate in sex offender treatment under the guidance and supervision of the probation office and follow the rules and regulations of that program, including submitting to periodic polygraph testing to aid in the treatment and supervision process. You must pay for the cost of treatment, including polygraph sessions, at the rate of \$10 per session, with the total cost not to exceed \$40 per month, based on ability to pay as determined by the probation office. If you are financially unable to pay for the cost of treatment, the co-pay requirement will be waived.
4. You must not communicate, or otherwise interact, with A.B., J.G., T.S., or D.G., either directly or through someone else, without first obtaining permission from the probation officer. If any contact occurs, you must immediately leave the area and report the contact to the probation office.

DEFENDANT: DEONTE WOMACK
 CASE NUMBER: 4:20-CR-00045-BSM-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

TOTALS	\$ _____	0.00	\$ _____	0.00
---------------	----------	------	----------	------

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
 ** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
 *** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DEONTE WOMACK
 CASE NUMBER: 4:20-CR-00045-BSM-1

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 200.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant’s ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons’ Inmate Financial Responsibility Program, are made to the clerk of the court.

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 cost(s):
- The defendant shall forfeit the defendant’s interest in the following property to the United States:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Government

vs.

DEONTE WOMACK
Defendant

No. 4:20-cr-45-BSM
July 24, 2024
Little Rock, Arkansas
1:33 p.m.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE BRIAN S. MILLER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

KRISTIN HUNTINGTON BRYANT
KATIE HINOJOSA
Assistant United States Attorney
P.O. Box 1229
Little Rock, Arkansas 72203

On Behalf of the Defendants:

GEOFFREY KEARNEY
The Law Office of Geoffrey D. Kearney, PLLC
100 South Pine Street
Pine Bluff, Arkansas 71601

Proceedings reported by machine stenography and
displayed in realtime; transcript prepared utilizing
computer-aided transcription.

Valarie D. Flora, FCRR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1 enhancement has been removed.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So what the probation officer just
5 laid out, those are the differences in the prior
6 presentence report and this one, essentially removing
7 those enhancements against you.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. And -- I understand.

11 MR. KEARNEY: Just for the record, following my
12 memo.

13 THE COURT: Those were based on motions filed by
14 Mr. Kearney. So we looked at that, probation then removed
15 -- struck those enhancements against you.

16 Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, Mr. Kearney, do you have any
19 additional -- I know that you had objections to paragraphs
20 41 and 42 and then on 44. Other than those, do you have
21 any other objections to the presentence report?

22 MR. KEARNEY: Other than the legal arguments
23 made in my memo, no, Your Honor.

24 THE COURT: And the legal arguments you make in
25 your memo, essentially, are that the base offense level

Valarie D. Flora, FCRR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1 should be 14 and not 34 because the type of force,
2 threats, fraud, or coercion has contemplated by the law
3 were not committed in this case by Mr. Womack. That's the
4 way I read your brief as saying. So instead of having a
5 base offense level of 34, his base offense level should be
6 14.

7 MR. KEARNEY: The first aspect of it is a
8 technical argument. The guidelines state that 34 --
9 offense of conviction is 18 U.S.C. 1591(b)(1). There is
10 technically not an offense under 1591(b)(1). 1591(b)(1)
11 speaks to a range of punishment for someone who commits an
12 offense set forth in (a), but it itself is not an offense.
13 It says that it's -- the text says it is a sentence for an
14 offense in (a)(1) and there are one or two other instances
15 with the statute that suggest that it is essentially just
16 claiming to be an offense itself. And so because there is
17 not actually an offense in (b)(1), we think that the 14
18 guideline is appropriate.

19 I understand that there is -- that I don't -- there's
20 certainly an argument to the contrary that I'm sure the
21 government is going to offer. But as to whether someone
22 has been convicted of 1591(b)(1), that's not an offense of
23 conviction.

24 THE COURT: I understand. But looking at -- so
25 you're saying 1591(b)(1) is not an offense.

Valarie D. Flora, FCRR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1 MR. KEARNEY: Correct, Your Honor.

2 THE COURT: Although, the guideline, I think
3 it's USSG 2G1.1, states that the base offense level is 34
4 if the offense of conviction is 1591(b)(1).

5 MR. KEARNEY: Yes, Your Honor.

6 THE COURT: But you're saying 91(b)(1) is not an
7 actual offense.

8 MR. KEARNEY: Correct, Your Honor. And I'm
9 sorry. That's not to remove the kind of factual aspects
10 of it, but I wanted to make sure that -- wanted to hit
11 that as well.

12 THE COURT: I understand. I understand.

13 Ms. Bryant, my -- let me just say this, Mr. Kearney.
14 I probably dug a little deeper in my mind than what I
15 should have. Initially, I looked at (b)(1) and I looked
16 at the conduct that's set forth, the means of force,
17 threats of force, fraud, coercion, described in section
18 (e)(2), and I started trying to think of what the
19 testimony was at trial. That's kind of where my mind went
20 and to see if the testimony matched up with what the
21 statute describes.

22 Then I just pulled the verdict form. And the verdict
23 form is a conviction that list those elements. So that's
24 what the jury actually found him guilty of. And so that
25 kind of wiped it away for me. But I'll let the government

Valarie D. Flora, FCRR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1 respond.

2 What do you make to Mr. Kearney's textual argument
3 that (b)(1) is not an actual offense?

4 MS. BRYANT: Your Honor, (b)(1) references
5 subsection A, which is -- which lists the offense. It's
6 just like in the felon in possession context, G1 doesn't
7 say not less than -- or not more than ten years, not more
8 than 15 years. You have to go to a different subsection
9 to determine that, but (b)(1) goes back and references
10 (a). It's the penalty provision.

11 Furthermore, the language in the superseding
12 indictment tracks both (a)(1) as well as (b). And at his
13 plea and arraignment, I pulled his case summary and
14 confirmed that he was advised that the penalty was not
15 less than 15 years, which is what is prescribed in
16 subsection (b). So it all references it back and he was
17 advised that those were the penalties that he was facing
18 because it's -- the penalty section is under (b)(1).

19 THE COURT: Okay. Mr. Kearney, any reply to
20 that?

21 MR. KEARNEY: I'll just additionally note --
22 I'll stand on what I've stated before. I'll also
23 additionally note as I noted in the memo, looking at the
24 jury instructions which tracks 1591(a), there is an
25 allowance for a finding of guilty on reckless -- finding

Valarie D. Flora, FCRR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1 reckless. There is not that -- there is no reckless
2 allowances in 1591(b). There is a reckless commission of
3 one of the statute below 91(a), so -- but it's not
4 1591(b)(1)(B)(A) -- sorry -- 1591(b). So it's -- so the
5 text shows that they're aware of how to put in reckless if
6 they want to allow one of those other punishment levels to
7 be satisfied by recklessness, but that wasn't in 1591. So
8 the jury was allowed to convict him on a reckless finding,
9 but there's no -- but there's nothing about a reckless
10 finding in 1591(b).

11 THE COURT: Okay. Any response to that?

12 MS. BRYANT: There is no mens rea requirement in
13 (b). (b) is just the penalty subsection that, again, goes
14 back and references (a) which allows both knowing or
15 reckless disregard. It's simply the penalty provision for
16 (a) which encompasses that.

17 I think that this -- this happens in all the -- a
18 bunch of the statutes that the Court sees where the penal
19 provision is in a separate section. It doesn't mean that
20 it's not an offense that he committed which he was advised
21 of which the jury found and was instructed properly.

22 THE COURT: I understand that. I think the -- I
23 probably -- like I said, I probably dug a little deeper
24 than what I should have and started trying to think about
25 what the testimony at the trial was and what the jury

1 heard and what they found. And then when I went to the
2 verdict form, the verdict form is a finding that tracks
3 (b)(1) which then refers to (a).

4 So the verdict form -- and I'll read this to you,
5 Mr. Womack, just so you can hear it. On verdict form 1,
6 on the charge of sex trafficking by force, fraud, or
7 coercion as set forth in court -- set out in count 1. And
8 then in verdict form 2, it says on the charge of sex
9 trafficking by force, fraud, or coercion as set out in
10 count 2.

11 So they, essentially, track the language of the
12 statute. So the jury has already found that. And so even
13 if I were to look at it and say, well, I heard the
14 testimony and my interpretation of the testimony is a
15 little different than that, I can't do it because I'm
16 bound by the determination of the jury. That's what the
17 jury found.

18 So yes, sir.

19 MR. KEARNEY: Just to, again, kind of -- that
20 was I think -- I think that's where the difference in the
21 mens rea requirement can come in, is the jury, again,
22 found recklessly and the Court -- the recklessly standard,
23 and the Court -- so that being the case, I'm not sure the
24 Court is required to carry that over into its factual
25 finding here.

Valarie D. Flora, FCRR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1 THE COURT: All right. Mr. Kearney, you've made
2 good arguments and you have preserved your record on all
3 of this for appeal. I'm going to overrule you. And I'll
4 overrule you on the paragraphs 41, 42, and 44, as well
5 just so you have a record on those. Okay?

6 MS. BRYANT: Your Honor, I have -- probation
7 references the charging documents. I would like to put
8 those in the record.

9 THE COURT: Let Mr. Kearney take a look at
10 those.

11 MS. BRYANT: I provided him a copy.

12 THE COURT: Do you have any objection to these
13 coming into the record?

14 MR. KEARNEY: No, Your Honor.

15 THE COURT: I'll receive those.

16 (Government's Exhibits 1, 2, and 3 admitted into
17 evidence.)

18 MS. BRYANT: Just for the Court's reference and
19 for the record, Government's Exhibit 1, when the probation
20 office states the probation office relied upon documents
21 provided by the County Criminal Court Number 10 in Dallas
22 county, Texas, according to court documents, on February
23 1, 2002, the defendant was convicted of assault
24 misdemeanor and was sentenced to 15 months probation. The
25 offense occurred on March 25, 2001. That document I have

Valarie D. Flora, FCRR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

UNITED STATES OF AMERICA

Government

Vs.

DEONTE WOMACK

Defendant

No. 4:20-cr-45-BSM
June 1, 2023
Little Rock, Arkansas
8:30 a.m.

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE BRIAN S. MILLER

UNITED STATES DISTRICT JUDGE

VOLUME 2 OF 3 VOLUMES

APPEARANCES:

On Behalf of the Government:

KRISTIN HUNTINGTON BRYANT
KATIE HINOJOSA
Assistant United States Attorney
P.O. Box 1229
Little Rock, Arkansas 72203

On Behalf of the Defendants:

JOHN WESLEY HALL, JR.
Law Offices of John Wesley Hall, Jr. PA
1202 Main Street, Suite 210
Little Rock, Arkansas 72202

Proceedings reported by machine stenography and
displayed in real time; transcript prepared utilizing
computer-aided transcription.

Valarie D. Flora, FCRR, TX-CSR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

MOTION FOR JUDGMENT OF ACQUITTAL

1 here's what we went through.

2 I do think -- and I'll be very honest with you. In
3 listening to this case, what I seem to have been hearing
4 was a prostitution pimp case and not a trafficking case
5 that should be in federal court. I think Counts 1 and 2,
6 yes. Counts 3 and 4, I'm going to grant the motion for
7 judgment of acquittal.

8 And I think this is the first time in 15 years I've
9 ever granted the motion. It's not based on the weakness
10 of your case and on your trial. I think you put on the
11 case you have. But as I was sitting here, I just kept
12 waiting for the evidence that was going to put it over the
13 top on 3 and 4, and I didn't get it.

14 So I'm going to let 1 and 2 go to the jury. Of
15 course, you object to it.

16 Now, are you going to put on a case?

17 MR. HALL: Can we have a couple of minutes to
18 talk about that?

19 THE COURT: Do you want me to stand down or are
20 you --

21 MR. HALL: No. You can stay there.

22 Mr. Womack chooses to testify, but I wish to make a
23 record on that, that he has a right not to.

24 THE COURT: Mr. Womack, just so we have a record
25 that you understand that you have a constitutional right

Valarie D. Flora, FCRR, TX-CSR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: On Counts 1 and 2, just let the record reflect that you renew your motion for judgment of acquittal, and it's overrule.

MR. HALL: That's adequate. Thank you.

THE COURT: Let's adjourn. If y'all need me to come out before 8:30 in the morning, just let me know and I'll come out. Okay? Let's recess.

(A recess was taken at 4:05 p.m.)

* * * * *

REPORTER'S CERTIFICATE

I, Valarie D. Flora, FCRR, RPR, certify that the foregoing is a correct transcript of proceedings in the above-entitled matter.

Dated this the 17th day of January, 2024.

/s/ Valarie D. Flora, FCRR

United States Court Reporter

Valarie D. Flora, FCRR, TX-CSR, AR-CCR
United States Court Reporter
Valarie_Flora@ared.uscourts.gov (501) 604-5105