No. 17-5492

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID GIVHAN,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
(Hon. David J. Hale, No. 3:16-cr-00057-1)

BRIEF FOR THE UNITED STATES AS APPELLEE

JOHN M. GORE
Acting Assistant Attorney General

TOVAH R. CALDERON
ELIZABETH P. HECKER
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-5550

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF AUTHORITIES

CASES: **PAGE**

CASES (continued): **PAGE**

CASES (continued): **PAGE**

STATUTES:

RULES:

SENTENCING GUIDELINE:

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17-5492

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID GIVHAN,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
(Hon. David J. Hale, No. 3:16-cr-00057-1)

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

This appeal is from a district court's final judgment in a criminal case. The district court entered final judgment against David Givhan on April 5, 2017. (Judgment, R. 117, PageID# 724-731).[1] The district court had jurisdiction under

[1] Citations to "R. __" refer to documents, by number, on the district court docket sheet. Citations to "PageID# __" refer to the page numbers in the paginated electronic record. Citations to "Br. __" refer to the page numbers in Givhan's opening brief. Citations to "Gov't Ex. __" refer to trial exhibits in the Appendix to Brief for United States as Appellee, filed concurrently.

18 U.S.C. 3231. This Court has jurisdiction under 28 U.S.C. 1291. On April 18, 2017, Givhan filed a timely Notice of Appeal. (Notice of Appeal, R. 120, PageID# 738).

STATEMENT OF THE ISSUES

1. Whether the district court properly limited cross-examination of two of Givhan's victims under Federal Rule of Evidence 412 (Rule 412), where Givhan was allowed to cross-examine them extensively about their motive for testifying, including their desire to avoid criminal charges, but was not allowed to bring out the specific nature of those charges.

2. Whether the district court properly excluded evidence under Rule 412 of the victims' other acts of prostitution to show their sexual behavior or predisposition, but allowed the government to introduce such evidence for other, legitimate purposes.

3. Whether Givhan has failed to show that the district court's Rule 412 rulings amounted to cumulative error warranting a new trial.

4. Whether Givhan has failed to show that the district court plainly erred in failing to address his argument for a lower sentence based on an article about alleged racial disparities in sex trafficking prosecutions.

STATEMENT OF THE CASE

1. Procedural History

In May 2016, a federal grand jury in the Western District of Kentucky returned a five-count indictment charging David Givhan with various offenses relating to his interstate transportation for prostitution of three women—Christine, Shakela, and Xia—and his sex trafficking of Christine.[2] (Indictment, R. 1, PageID# 1-7). Counts 1, 3, and 4 charged Givhan with interstate transportation of individuals for prostitution in violation of 18 U.S.C. 2421, and Counts 2 and 5 charged him with sex trafficking in violation of 18 U.S.C. 1591(a), (b)(1), and 1594(a). (Indictment, R. 1, PageID# 1-3).

Before trial, Givhan moved to introduce other acts of prostitution by the victims. (Motion to Introduce Evidence, R. 54, PageID# 175-178). He argued that such evidence was relevant to whether he employed force, threats, fraud, and coercion, and that its exclusion would violate his rights under the Confrontation Clause. (Motion to Introduce Evidence, R. 54, PageID# 176). In his reply brief, he argued that the evidence also was relevant to show that the women were

---

[2] While the indictment did not identify the victims by name, the district court later ordered that the victims could be identified at trial by their first names only. (Order, R. 74, PageID# 454-456). "Jane Doe #1" is Christine (Counts 1 and 2); "Jane Doe #2" is Shakela (Count 1); and "Jane Doe #3" is Xia (Counts 3, 4, and 5). Consistent with the district court's order, we refer to the victims by first name.

motivated to lie about him to avoid prostitution charges. (SEALED Reply Br., R. 67, PageID# 266-271). The district court denied the motion, but noted that Givhan would be permitted to cross-examine the victims about whether they had a motive to cooperate with the government. (Memorandum Op. and Order, R. 73, PageID# 448). Givhan filed a motion to reconsider (Motion to Reconsider, R. 81, PageID# 473-478), which the court denied. (Order, R. 82, PageID# 483).

Givhan was tried before a jury. On the first day of trial, the government learned that Xia was recanting part of her story related to the sex trafficking charge in Count 5, as she had realized that she had confused Givhan with her former pimp. The government promptly notified the defense counsel and the court. (Transcript, R. 139, PageID# 1175-1180; Transcript, R. 140, PageID# 1188-1189). Givhan moved to dismiss the indictment, arguing that the government's opening statement, which referred to evidence involving Xia that the parties now knew to be false, had unduly prejudiced the case, and that the indictment itself was tainted by Xia's false story. (Transcript, R. 140, PageID# 1189-1191). The court denied the motion, holding that the grand jury had heard substantial evidence to support the charges and the recanted statements were only one part of the evidence supporting the indictment. (Transcript, R. 135, PageID# 817-818). The court, however, dismissed Count 5, relating to Givhan's sex trafficking of Xia. (Transcript, R. 140, PageID# 818).

The jury convicted Givhan on the remaining counts. (Transcript, R. 144, PageID# 1875-1877). Givhan moved for a new trial arguing, among other things, that the district court's exclusion of evidence about the victims' prior and subsequent prostitution denied him the right to present a defense, and that the court's refusal to permit Givhan to elicit testimony that two of the victims had been facing prostitution charges "misled the jury." (Motion for New Trial, R. 102, PageID# 585). The court denied the motion. (Order, R. 112, PageID# 711). The district court sentenced Givhan to 235 months' imprisonment followed by a life term of supervised release on Count 2 (sex trafficking of Christine), and 10 years' imprisonment on Counts 1, 3, and 4 (interstate transportation for prostitution of all three victims), all to be served concurrently. (Transcript, R. 136, PageID# 863-865). On April 18, 2017, Givhan filed a timely notice of appeal. (Notice of Appeal, R. 120, PageID# 738).

2. Factual Background

In late 2014 and early 2015, Givhan, going by the moniker "Premier," transported Christine, Shakela, and Xia across state lines for prostitution and trafficked Christine for his own financial gain. Givhan used threats and coercion to force Christine to offer certain sexual services against her will, to accept every potential client, and to engage in commercial sex transactions when she was ill and in extreme pain. Givhan's sex trafficking of Christine and his transportation of all

three women in interstate commerce to perform sex acts formed the bases of the four counts of conviction.

a. Sex Trafficking And Interstate Transportation Of Christine (Counts 1 And 2)

Christine met Givhan in September 2014, when she was a single, homeless mother of three. (Transcript, R. 141, PageID# 1214-1216). Her mentally and physically abusive boyfriend had gone to prison a few months earlier. (Transcript, R. 141, PageID# 1216-1217). She was outside a hotel trying to repair a tire on her car when Givhan pulled up next to her, complimented her appearance, and gave her his phone number. (Transcript, R. 141, PageID# 1217). After some time, she called him, and he picked her up from a party. (Transcript, R. 141, PageID# 1218). While driving around that night, he asked her if she wanted to make some money. (Transcript, R. 141, PageID# 1218). After she said yes, he took her to a hotel and explained that she would be performing sexual acts with clients in exchange for money. (Transcript, R. 141, PageID# 1218-1220). He told her that she would make a lot of money, and that she would be able to get out of her difficult financial situation. (Transcript, R. 141, PageID# 1219-1220). Christine testified that despite being nervous, she was willing to do anything to get out of being homeless. (Transcript, R. 141, PageID# 1220).

Christine performed commercial sex acts with up to 20 clients per day. (Transcript, R. 141, PageID# 1230). Givhan gave her a daily earnings quota of at

least $1000, which she almost always met. (Transcript, R. 141, PageID# 1238-1239). Givhan kept all the money Christine earned performing commercial sex acts, with the exception of $20 per day to pay her babysitter. (Transcript, R. 141, PageID# 1226-1229, 1234). He even took Christine's tax refund, approximately $4000. (Transcript, R. 141, PageID# 1276-1277).

Givhan arranged and controlled every aspect of Christine's life. Givhan set up advertisements for her on a website that advertised individuals for commercial sex. (Transcript, R. 141, PageID# 1224). He picked all the locations and made her see every potential client. (Transcript, R. 141, PageID# 1369). He gave Christine two cell phones to be used only to make appointments with clients. (Transcript, R. 141, PageID# 1224). He permitted her to use her own phone only to contact him. (Transcript, R. 141, PageID# 1224). He checked her phone "constantly" to make sure she was not in contact with anyone else. (Transcript, R. 141, PageID# 1279). He did not allow her to call her children unless she first obtained his permission, because any outside contact might be a distraction. (Transcript, R. 141, PageID# 1235). When Givhan took Christine out in public, he forced her to look down and would not allow her to make eye contact with anyone. (Transcript, R. 141, PageID# 1235). He prohibited her from eating pork and made her wear a wig. (Transcript, R. 141, PageID# 1235-1236). He made her watch movies to learn "how to treat a pimp." (Transcript, R. 141, PageID# 1257-1258, 1266). He

ordered her to perform anal sex with customers against her wishes. (Transcript, R. 141, PageID# 1251). When she told him she was not comfortable with anal sex and that it hurt, he forced her to have anal sex with him almost every night, ignoring her pleas for him to stop, so that she could get used to it. (Transcript, R. 141, PageID# 1251-1252). He called her "lazy," "white trash," and told her she would never be good for anything. (Transcript, R. 141, PageID# 1239). He made her feel "like he was the only one [she] had." (Transcript, R. 141, PageID# 1228; see also Transcript, R. 141, PageID# 1252-1253). Givhan told Christine that if she refused to follow his orders, he would leave her where she was and that she would be left with nothing. (Transcript, R. 141, PageID# 1236).

Givhan also controlled Christine through threats of violence. He told her that if she failed to follow his orders he would harm her or her children. (Transcript, R. 141, PageID# 1236). He told her stories of "what happened with his past girls," including that they had "disappeared" or had been locked in basements, and that he had beat them. (Transcript, R. 141, PageID# 1236). He told her that if she ran from him, she and her children would not be safe, and that he would find them. (Transcript, R. 141, PageID# 1238). He told her repeatedly that he would kill her. (Transcript, R. 141, PageID# 1238). On at least three occasions, Christine heard or witnessed Givhan beating another woman who worked for him. (Transcript, R. 141, PageID# 1249, 1370-1371, 1380-1381).

Givhan transported Christine across state lines to perform commercial sex acts on at least two occasions. In late 2014, he took her to Fort Wayne, Indiana, then to Louisville, Kentucky, and finally to Baytown, Texas. (Transcript, R. 141, PageID# 1231, 1239; see also Gov't Exs. 21-22, 44 (hotel receipts)). While in Texas, Christine "hit [her] [$]10,000 mark," meaning that she had made her first $10,000 for him. (Transcript, R. 141, PageID# 1240-1241). In keeping with his custom of "branding" girls that hit the $10,000 mark, Givhan forced Christine to have his pimp name, "Premier," tattooed on her neck. (Transcript, R. 141, PageID# 1240-1241; see also Gov't Ex. 24, photo).

After they returned to Michigan, just before Christmas, Christine asked Givhan for some time off to be with her children. He refused and made her work instead. (Transcript, R. 141, PageID# 1242-1243). She took the money she made and hid at a friend's house. (Transcript, R. 141, PageID# 1243-1244). After buying Christmas presents for her children, Christine needed more money. She posted her own advertisement on *Backpage* and engaged in prostitution in Kalamazoo for one day. (Transcript, R. 141, PageID# 1244-1245). Her last client of the day told her that she could make more money in Grand Rapids, and she agreed to accompany him there.[3] (Transcript, R. 141, PageID# 1246). While

[3] Givhan asserts that Christine "prostituted for another pimp named King David in Kalamazoo." Br. 10, 46. There is no evidence of that in the record.

(continued…)

Christine was in a Grand Rapids mall, Givhan found her. (Transcript, R. 141, PageID# 1247). She later learned that the man who had brought her to Grand Rapids was a fellow pimp, and Givhan had sent him to pick her up. (Transcript, R. 141, PageID# 1246-1247).

Early in 2015, Givhan took Christine to Florida to perform commercial sex acts. (Transcript, R. 141, PageID# 1268). Christine was very sick, with abdominal cramping and vaginal bleeding. She told Givhan that she was in pain and could not work, but he forced her to continue to service clients. (Transcript, R. 141, PageID# 1268-1269). Christine finally went to the hospital, where she was diagnosed with pelvic inflammatory disease and a urinary tract infection. (Transcript, R. 141, PageID# 1269-1270; Transcript, R. 143, PageID# 1620-1631; Gov't Ex. 38, medical records).

In March 2015, Givhan learned that Christine had taken her children to see their father without Givhan's permission, and that she had rented a car using money from her tax refund. (Transcript, R. 141, PageID# 1277-1278, 1281). Givhan took her from Kalamazoo to Warren, Michigan to perform commercial sex

---

(…continued)
Christine testified that she was not working with a pimp in Kalamazoo. The man who Christine later learned was called "King David" was her last client of the day. (Transcript, R. 141, PageID# 1246-1247). He took her to Grand Rapids to make money, but nothing in the record suggests that she ever worked for him. (Transcript, R. 141, PageID# 1245-1247).

acts, all the while verbally abusing her for these supposed infractions. (Transcript, R. 141, PageID# 1278-1279). When they arrived at a hotel in Warren, Givhan left to run an errand. (Transcript, R. 141, PageID# 1280). While he was gone, Christine sent a text message to her mother, asking her to come to Warren and pick her up. (Transcript, R. 141, PageID# 1280). Christine packed her belongings and asked the hotel clerk to hide her until her mother arrived. (Transcript, R. 141, PageID# 1279-1280; Transcript, R. 143, PageID# 1638-1640). When her mother arrived, Christine appeared frightened, jumped into the car, and asked her mother to go quickly. (Transcript, R. 100, PageID# 572-575).

Back in Kalamazoo, Givhan tried to contact Christine repeatedly. (Transcript, R. 141, PageID# 1285-1287, 1292, 1364; Gov't Ex. 25, text message). He told her that she would not be "able to run from him forever" and that when he found her, it would be "over" for her. (Transcript, R. 141, PageID# 1292).

In April 2015, Christine was arrested for prostitution in Fort Wayne, Indiana. The Fort Wayne police noticed the "Premier" tattoo on Christine's neck and questioned her about Givhan. (Transcript, R. 141, PageID# 1288-1289). Christine agreed to talk to the police about Givhan, and the police did not charge her with prostitution. (Transcript, R. 141, PageID# 1317-1326).

b. Interstate Transportation Of Shakela (Count 1)

Shakela met Givhan around September of 2014. She was walking down the street when he drove up beside her. (Transcript, R. 142, PageID# 1410). He told her that she was very pretty and could make a lot of money by working for him. She told him she was not interested. (Transcript, R. 142, PageID# 1410-1411). A month or so later she encountered him again in downtown Kalamazoo. Givhan made the same offer, and this time she accepted. (Transcript, R. 142, PageID# 1411-1412).

Givhan took Shakela across state lines to prostitute several times. In late 2014, he drove her from Kalamazoo to Indiana, Kentucky, and Texas—the same trip on which he took Christine. (Transcript, R. 142, PageID# 1419-1420, 1432-1435). He also flew her to Orlando, Florida. (Transcript, R. 142, PageID# 1419-1420). When they arrived in each city, Givhan posted advertisements on *Backpage* advertising Shakela and Christine for commercial sex acts. (Transcript, R. 142, PageID# 1420). Shakela saw up to 12 clients per day. (Transcript, R. 142, PageID# 1426). Although he told her that they would split the proceeds, Givhan kept all the money Shakela made. (Transcript, R. 142, PageID# 1424-1425). Shakela believed that if she tried to keep some of the money, Givhan would have slapped her or otherwise punished her. (Transcript, R. 142, PageID# 1426).

Like Christine, Givhan forced Shakela to walk with her head down when out in public, and did not permit her to speak with or make eye contact with any men other than himself and the clients. (Transcript, R. 142, PageID# 1428-1429). To ensure that Shakela and Christine answered every call that came in, Givhan made them turned their ringer volume all the way up so that he could hear each ring and would regularly check their phones for missed calls. (Transcript, R. 142, PageID# 1430). He also told Shakela that his German shepherd knew an attack word, and that if "anybody got out of line," he would use it. (Transcript, R. 142, PageID# 1439). Once, when Shakela and Givhan were in Florida, Shakela failed to get money from a client, and when Givhan found out, he slapped her twice, the second time hard enough to knock her down. (Transcript, R. 142, PageID# 1428).

Shakela eventually left Givhan on her own. (Transcript, R. 142, PageID# 1451). In April 2015, she was arrested with Christine in Fort Wayne, Indiana, for prostitution. (Transcript, R. 142, PageID# 1444-1445, 1453-1454). Shakela agreed to talk to police about Givhan, and the police did not charge her with prostitution. (Transcript, R. 142, PageID# 1453-1456).

c. Interstate Transportation Of Xia (Counts 3 And 4)

Xia met Givhan in April 2015 in a club where she worked as a stripper. (Transcript, R. 143, PageID# 1644-1645, 1652). Believing that Givhan was her former pimp, Xia walked up to him and started a conversation. (Transcript, R.

143, PageID# 1644-1647, 1652). He told her that she could make more money outside the strip club. (Transcript, R. 143, PageID# 1653). He asked her to give him all the money she had made that night, and she complied. (Transcript, R. 143, PageID# 1653).

Several days later, Givhan drove Xia to Louisville, Kentucky, where he posted an advertisement on *Backpage* advertising her for commercial sex. (Transcript, R. 143, PageID# 1668-1670; Gov't Ex. 21, Red Roof Inn receipt). While in Kentucky, Xia performed sex acts with multiple clients in exchange for money, which she then handed over to Givhan. (Transcript, R. 143, PageID# 1673). Clients paid different amounts depending on the service and amount of time, and Givhan set all prices. (Transcript, R. 143, PageID# 1678). Xia made approximately $2000 performing commercial sex services for Givhan during the Louisville trip. (Transcript, R. 143, PageID# 1682).

On April 29, 2015, Givhan took Xia back to Michigan to attend therapy. (Transcript, R. 143, PageID# 1683-1684). She did not want to return with him to Louisville, but he told her that if she refused, he would tell her probation officer that she had been out of state and had been drinking. (Transcript, R. 143, PageID# 1686). He told her that as long as she always came back to him, he would not hurt any of her family members. (Transcript, R. 143, PageID# 1687). The next day, Givhan drove Xia back to Louisville, where she again saw clients for commercial

sex. (Transcript, R. 143, PageID# 1698-1701; Gov't Ex. 16A, America's Best Value Inn & Suites receipt). On May 2, 2015, Xia was arrested for prostitution in an undercover sting operation. (Transcript, R. 143, PageID# 1706-1710).

SUMMARY OF THE ARGUMENT

This Court should affirm Givhan's convictions and sentence. Givhan's challenges to the district court's Rule 412 rulings lack merit, and the rulings do not amount to cumulative error. Givhan's unpreserved sentencing challenge also fails.

1. The district court properly limited cross-examination under Federal Rule of Evidence 412 about the nature of the criminal charges that Christine and Shakela faced when the Fort Wayne police arrested them for prostitution. The court allowed Givhan to ask the women about their motive and bias, including about their ability to avoid criminal charges in Fort Wayne by talking to police about Givhan. But the court did not allow Givhan to ask them about the nature of the charges they faced, because doing so would have violated Rule 412's ban on evidence of sex offense victims' sexual behavior.

Givhan has failed to establish that the court's ruling violated his Sixth Amendment right to confront Christine and Shakela about their motive for testifying. He asserts that because the women were arrested for prostitution, they somehow had a greater motive or incentive to cooperate with police and to implicate Givhan than if they had been arrested for some other offense. But

Givhan elicited extensive testimony from both Christine and Shakela that Fort Wayne police had agreed to forgo charging them with a crime after they agreed to provide evidence against Givhan. After Givhan's effective cross-examination, it should have been clear to the jury that the women had a strong motive to implicate Givhan to avoid going to jail. Permitting Givhan to elicit testimony that their arrests were for prostitution would have run afoul of Rule 412 while failing to add anything of substance to Givhan's defense.

2. The district court's Rule 412 rulings limiting cross-examination about the victims' other acts of prostitution also was proper and did not deny Givhan his right to present a complete defense. Rule 412 prohibits the introduction of evidence to show that a sex offense victim engaged in other sexual behavior or to prove a victim's sexual predisposition. Givhan argues that because the government brought out evidence that Xia and Christine engaged in prostitution while not with Givhan, the door was opened for Givhan to question all the victims about other prostitution without limitation. But the government's evidence was not offered for either of Rule 412's prohibited purposes, and Givhan was able to cross-examine Christine and Xia about the evidence of other prostitution that the government introduced. The district court properly limited Givhan's questioning on these subjects under Rule 412.

3. Givhan has waived his cumulative error argument on appeal by failing to meaningfully brief it. But in any case, Givhan has not, and cannot, establish that the district court's Rule 412 rulings—even if they were in error—denied him a fundamentally fair trial. There was compelling evidence of guilt on all four counts of conviction.

4. Givhan's sentence should be affirmed. His sentence reflects the district court's proper application of the sentencing guidelines and consideration of the factors set forth in 18 U.S.C. 3553. The court did not plainly err in failing to address Givhan's argument that he should have received a lower sentence based on a single research article about alleged racial disparities in sex trafficking prosecutions. The federal sentencing guidelines prohibit district courts from considering a defendant's race in sentencing. In any event, Givhan's argument was based on a single article that had nothing to do with him, and indeed, had nothing to do with *sentencing* disparities at all.

ARGUMENT

I

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY RELYING ON RULE 412 TO LIMIT CROSS-EXAMINATION ABOUT THE NATURE OF THE CHARGES THAT CHRISTINE AND SHAKELA FACED WHEN THEY WERE ARRESTED, AND THE COURT'S RULING DID NOT VIOLATE GIVHAN'S SIXTH AMENDMENT RIGHT TO CONFRONT THE WITNESSES ABOUT THEIR MOTIVE

A. Standard Of Review

Because the district court did not prohibit Givhan from cross-examining Christine and Shakela, but merely limited the extent of cross-examination, this Court reviews the district court's ruling for abuse of discretion. See *United States* v. *Fields*, 763 F.3d 443, 464 (6th Cir.), cert. denied, 135 S. Ct. 392 (2014), 135 S. Ct. 978, and 135 S. Ct. 987 (2015); *United States* v. *Kone*, 307 F.3d 430, 436-437 (6th Cir. 2002); *Boggs* v. *Collins*, 226 F.3d 728, 743 (6th Cir. 2000), cert. denied, 532 U.S. 913 (2001); *United States* v. *Carson*, 870 F.3d 584, 597 (7th Cir. 2017); see also *United States* v. *Blackwell*, 459 F.3d 739, 752 (6th Cir. 2006) ("[W]e review all challenges to district court evidentiary rulings, including constitutional challenges, under the abuse of discretion standard," which "is not at odds with *de novo* interpretation of the Constitution inasmuch as a district court does not have the discretion to rest its evidentiary decisions on incorrect interpretations of the Constitution."), cert. denied, 549 U.S. 1211 (2007).

B. Background

Before trial, Givhan moved to introduce evidence that Christine and Shakela engaged in prostitution after they were no longer associated with him. (Motion to Introduce Evidence, R. 54, PageID# 175-177). Givhan initially argued that this evidence was relevant to whether he employed force, threats, fraud, and coercion, and that its exclusion would violate his rights under the Confrontation Clause. (Motion to Introduce Evidence, R. 54, PageID# 176). Givhan did not argue in that motion that the evidence was relevant to the issue of motive, though he did so in his reply brief. (SEALED Reply Br., R. 67, PageID# 266-271).

The district court denied Givhan's motion, holding that "any evidence of subsequent prostitution by Givhan's alleged victims is not relevant to whether Givhan used force, threats, or coercion to cause them to engage in commercial sex acts during the time period charged in the indictment." (Memorandum Op. and Order, R. 73, PageID# 448). The court made clear, however, that Givhan would be able to cross-examine the witnesses about "any favorable treatment from the government offered in exchange for [their] cooperation * * * without reference to the nature of their crimes." (Memorandum Op. and Order, R. 73, PageID# 448).

Givhan moved the court to reconsider, again asserting that the court's ruling prevented him from arguing to the jury that Christine and Shakela were willing business partners and that there was no force, fraud, or coercion. (Motion to

Reconsider, R. 81, PageID# 474). Givhan also argued that the fact that Christine and Shakela were arrested for prostitution was relevant to their motive or bias. (Motion to Reconsider, R. 81, PageID# 474-475). The district court again denied the motion. (Order, R. 82, PageID# 483).

C. Givhan Has Not Established That The District Court's Ruling Violated His Sixth Amendment Right To Confront Christine And Shakela About Their Motive

The district court properly limited cross-examination under Rule 412. Rule 412 generally prohibits, in sex offense cases, the admission of "(1) evidence offered to prove that a victim engaged in other sexual behavior; or (2) evidence offered to prove a victim's sexual predisposition." Fed. R. Evid. 412(a)(1) and (2). Rule 412 was designed "to safeguard the alleged victim against the invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details." Rule 412 Advisory Committee Notes, 1994 Amendments. The Rule therefore "encourages victims of sexual misconduct to institute and to participate in legal proceedings against alleged offenders." *Ibid.* There are three narrow exceptions to Rule 412 in criminal cases, where the court "may" admit evidence that the Rule would otherwise bar. Fed. R. Evid. 412(b)(1). One of these exceptions, which Givhan invokes here, is where exclusion of the evidence would violate the defendant's constitutional rights. Fed. R. Evid. 412(b)(1)(C). Specifically, he claims (Br. 20) that this exception applies because

the district court's exclusion of testimony about the nature of the charges Christine and Shakela were facing in Fort Wayne violated his right under the Confrontation Clause of the Sixth Amendment to confront witnesses about their motive or bias. For the reasons set forth below, Givhan's argument, which relates only to Counts 1 and 2, fails.

The Confrontation Clause guarantees a criminal defendant the right "to be confronted with the witnesses against him." U.S. Const. Amend. VI. Courts have long held that cross-examination to show bias, motive or prejudice is protected under the Confrontation Clause. See *Delaware* v. *Van Arsdall*, 475 U.S. 673, 678-680 (1986); *Davis* v. *Alaska*, 415 U.S. 308, 316-317 (1974). This does not mean, however, that the Constitution guarantees defendants an unfettered right to cross-examination that is unlimited in any way. As stated in *Van Arsdall*, 475 U.S. at 679, "[i]t does not follow, of course, that the Confrontation Clause of the Sixth Amendment prevents a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness." Rather, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Ibid.*; see also *Boggs*, 226 F.3d at 736 ("[T]he Confrontation Clause 'guarantees an *opportunity* for

effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'") (quoting *Delaware* v. *Fensterer*, 474 U.S. 15, 20 (1985)).

This Court has held that "[i]f a trial court has curtailed cross-examination from which a jury could have assessed a witness's bias, prejudice or motive to testify," then "a reviewing court must assess whether the jury had enough information, despite the limits placed on otherwise permitted cross-examination, to assess the defense theory of bias or improper motive." *Boggs*, 226 F.3d at 739; see also *United States* v. *Holden*, 557 F.3d 698, 704 (6th Cir. 2009) (the "key issue" is whether the jury had enough information to assess the defense's motive theory despite the limits placed on cross-examination). Even if there was "a denial or significant diminution of cross-examination" a reviewing court must "apply[] a balancing test, weighing the violation against the competing interests at stake." *Boggs*, 226 F.3d at 739; see also *United States* v. *Jackson*, 627 F. App'x 460, 462 (6th Cir. 2015), cert. denied, 136 S. Ct. 2023 (2016).

1. The Jury Had Abundant Evidence To Assess Givhan's Theory Of Motive And Bias

The district court allowed Givhan to extensively cross-examine Christine and Shakela about their arrests in Fort Wayne and their ability to avoid criminal charges by providing information to the police about Givhan. Defense counsel elicited testimony from Christine that the women traveled with a man from

Kalamazoo to Fort Wayne, where they were arrested. (Transcript, R. 141, PageID# 1307-1309). Christine testified that the FBI arrived, and that she agreed to "help the FBI get David Givhan." (Transcript, R. 141, PageID# 1311-1312). She testified that a Fort Wayne detective filled out an arrest report, but offered not to file it if she cooperated and testified against Givhan. (Transcript, R. 141, PageID# 1319-1321). Givhan's motive defense—that Christine had an incentive to implicate Givhan to avoid criminal charges—was apparent to the jury. For example, defense counsel elicited the following testimony during his cross-examination of Christine:

> Q: "And they made it absolutely clear what you have to do, what you had to do to get out, to walk out of [jail] that day, didn't they?"
> A: "Yeah."
> Q: "And that was get David Givhan?"
> A: "Yes."
> Q: "They even said that; correct?"
> A: "Yes."
> Q: "They even said the words 'get David Givhan.' Correct?"
> A: "Yes."
> Q: "You get David Givhan and you walk; right? That was the deal?"
> A: "Yes."

(Transcript, R. 141, PageID# 1321). The defense also elicited testimony from Christine on cross-examination that the man who accompanied the women to Fort Wayne was "a lookout" for them, that he was facing a felony charge, and that he would be released because law enforcement wanted to get Givhan. (Transcript, R. 141, PageID# 1323); see also:

> Q: "So everyone got the message. If you didn't cooperate, not only would you be charged, Shakela could be charged and your—the male friend could be charged; correct?"
> A: "Correct."
> Q: "And then they end this with we'll get Givhan and you walk out the door. Isn't that right?"
> A: "Yeah."

(Transcript, R. 141, PageID# 1323-1324). And although Givhan was not allowed to mention prostitution in his cross-examination of Christine, he was able to elicit testimony from Christine that she thought she could make a lot of money in Fort Wayne, and that making money was one of reasons she was there. (Transcript, R. 141, PageID# 1327).

The court also allowed Givhan to question Shakela extensively about her arrest in Fort Wayne. He elicited testimony that Shakela traveled with Christine and Christine's male friend to Fort Wayne. (Transcript, R. 142, PageID# 1453). She testified that in Fort Wayne she was taken to police headquarters and questioned, and that law enforcement told her she would not go to jail as long as she helped them "get [Givhan]." (Transcript, R. 142, PageID# 1454-1455). The defense also elicited testimony from Shakela on cross-examination that law enforcement in Fort Wayne threatened to notify police in Kalamazoo that Shakela

had violated her probation if she did not cooperate with their investigation of Givhan:[4]

> Q: "All right. And so you're there in the room with them. They want information about Givhan, and the deal is you're going to go to jail unless you give them information about—to help get [Givhan]; correct?"
> A: "Yes."
> Q: "And that if you didn't do that, if you didn't do that, if you didn't come through, then they were going to put the paperwork together and call the police chief in Kalamazoo; is that correct?"
> A: "Yes."
> Q: "And they'll come pick you up; correct?"
> A: "Yes."
> Q: "On a warrant; right?"
> A: "Yes."

(Transcript, R. 142, PageID# 1456). It is beyond question that the jury had enough information to discern that both Christine and Shakela had a strong incentive to implicate Givhan to avoid being charged with a serious crime.

This Court's case law supports the district court's limitation on cross-examination. For example, in *United States* v. *Fields*, 763 F.3d 443, 464-465 (6th Cir. 2014), a defendant wished to cross-examine a witness about state charges pending against him for aggravated robbery, which the defense argued would show that the witness had "extreme bias towards the government." *Id.* at 464. The district court ruled that the defense could ask the witness questions to explore bias,

---

[4] At the time of her arrest, Shakela was on probation for felony child abuse. (Transcript, R. 142, PageID# 1456, 1466). The defense brought out this conviction on cross-examination. (Transcript, R. 142, PageID# 1456, 1468-1469).

but that "general questioning about what [the witness] had been charged with" would be unfairly prejudicial under Federal Rule of Evidence 403. *Ibid.* This Court affirmed, holding that because the district court had allowed "extensive testimony regarding [the witness]'s potential bias," it was "hard-pressed to conclude that the jury was not 'otherwise in possession of sufficient information * * * to make a discriminating appraisal of the witness' motives and bias.'" *Id.* at 464-465 (quoting *Stevens* v. *Bordenkircher*, 746 F.2d 342, 346-347 (6th Cir. 1984)).

Similarly, in *Wiecek* v. *Lafler*, 417 F. App'x 443 (6th Cir. 2011), the defendant, accused of rape, argued that the victim had fabricated allegations that the defendant had given her a date-rape drug to avoid acknowledging that she had a drinking problem. *Id.* at 448. The defendant argued that the court had erred in excluding a poem the victim had written that suggested that she had previously regretted engaging in sexual conduct while experiencing alcoholic blackouts. *Id.* at 447. This Court upheld the exclusion of the poem under a state rape shield statute, holding that the exclusion did not violate the defendant's rights under the Confrontation Clause because the defendant had sufficient opportunity to cross-examine the victim about her history with alcohol, including her alcohol intake on the night in question. *Id.* at 448-449.

Other circuits have similarly held that once motive or bias is established, a district court does not violate the defendant's rights by limiting questioning about unnecessary details of that motive or bias. In *United States* v. *Carson*, 870 F.3d 584 (7th Cir. 2017), a sex trafficking case, the defendant challenged the district court's decision barring him from cross-examining a government witness about an occasion where the witness had allegedly offered to pimp one of the victims. *Id.* at 596. Evidence had already been introduced showing that the witness was testifying under a grant of immunity in the case. *Ibid.* The court upheld the limitation on cross-examination, explaining that "[i]t would offend the Sixth Amendment to deny a defendant the ability to establish that the witness had a motive to lie, but once that motivation has been established, the defendant has no constitutional right to pile on." *Id.* at 597. The court pointed out that "this is a case in which the witness's motivations were amply exposed," and the additional questioning would be "merely cumulative." *Id.* at 597-598; see also *United States* v. *Recendiz*, 557 F.3d 511, 530 (7th Cir.) ("The right to confrontation is not implicated where limitations on cross-examination did not deny the defendants the opportunity to *establish* that the witnesses may have had a motive to lie; rather, the limitations denied them the opportunity to *add extra detail* to that motive.") (internal quotation marks and citation omitted), cert. denied, 558 U.S. 881 (2009); *United States* v. *Roy*, 781 F.3d 416, 421 (8th Cir. 2015) (upholding exclusion of

victim's sexual history where district court stated, "[i]f there is some basis for believing that [the witness] actually has a motive to testify against [the defendant] based on the possibility that she might be prosecuted [for prostitution] and might get credit against any potential sentence . . . , then that could come in without identifying what the crimes are.").

2. Any Interest Givhan Had In Questioning Christine And Shakela About Subsequent Prostitution Was Outweighed By The Government's Interests In Protecting The Victims Under Rule 412

Even if the district court's decision to exclude the nature of Christine's and Shakela's arrest in Fort Wayne constituted a "significant diminution" of Givhan's motive defense, see *Boggs*, 226 F.3d at 739—a dubious proposition considering Givhan's extensive cross-examination of the women about their arrest and subsequent release in exchange for cooperation against Givhan—the government's substantial interest in having the evidence excluded far outweighs Givhan's interest in having it come in. Contrary to Givhan's assertion (Br. 20), a defendant's right to cross-examine witnesses does not automatically trump the interests implicated by Rule 412. Instead, this Court has instructed that "the trial court must balance [the government]'s interest in excluding certain evidence under the rape shield statute against a defendant's constitutionally protected interest in admitting that evidence, on a case-by-case basis—neither interest is superior *per*

se." *Gagne* v. *Booker*, 680 F.3d 493, 514 (6th Cir.) (en banc), cert. denied, 568 U.S. 965 (2012).

Courts have routinely rejected Confrontation Clause challenges to the exclusion of evidence under Rule 412. For example, in *United States* v. *Pumpkin Seed*, 572 F.3d 552, 559-560 (8th Cir. 2009), the defendant sought to introduce evidence that the victim had a motive to falsely accuse him of rape to conceal her own sexual relationship with a married man. As here, the defendant in that case argued that the evidence was admissible under Rule 412(b)(1)(C) because its exclusion violated his constitutional rights. *Id.* at 559. The Eighth Circuit disagreed. While acknowledging that criminal defendants have the right under the Fifth and Sixth Amendments to introduce evidence in their defense, the court explained that those rights may be limited as long as such limitations "are not arbitrary or disproportionate to the purposes they are designed to serve." *Id.* at 560 (internal quotation marks and citations omitted). The court described the important interests served by excluding the testimony, including saving the victim "from the harassment and embarrassment concomitant with discussing the details of one's past sexual activity * * * and prevent[ing] a thinly-veiled attack on [her] general credibility." *Ibid.* Contrasting these important interests with the minimal probative value of the evidence to the defendant's motive theory, the court upheld the district court's exclusion. *Id.* at 560-561.

Similarly, in *United States* v. *Lockhart*, 844 F.3d 501, 510 (5th Cir. 2016), a child sex trafficking case, the Fifth Circuit rejected the defendant's argument that the exclusion of evidence under Rule 412 relating to the victims' prior and subsequent prostitution violated the Confrontation Clause. The court concluded that because the defendants had been able to impeach the victims' credibility in a multitude of other ways, including questioning them about possible bias, Rule 412's application was "not 'arbitrary' or 'disproportionate to the purposes [it is] designed to serve.'" *Ibid.* (citations omitted).

Here, Givhan was able to question Christine and Shakela extensively about an alleged motive to lie to avoid criminal charges. Givhan's theory (Br. 31)—that the women may have had extra motivation to lie to convince law enforcement that they were less culpable because they were merely continuing down the path that Givhan had set them on—is speculative at best. Givhan's interest in having the jury hear this marginally relevant evidence was far outweighed by the government's interest in avoiding unnecessary shame and embarrassment to Christine and Shakela and confusing the jury with irrelevant and prejudicial information.

3. The Cases Cited By Givhan Do Not Support His Argument

The cases cited by Givhan do not help him. (Br. 21-24). In *Davis* v. *Alaska*, 415 U.S. 308, 309-310 (1974), a stolen safe was found near the home of a

government witness. The witness told law enforcement officers that he had seen the defendant in the area, and a search of the defendant's car revealed material from the safe. *Id.* at 310. The defendant sought to introduce evidence that the witness was on probation for having burglarized two cabins, arguing that this evidence was relevant to show that the witness was motivated to lie to "shift suspicion away from himself," and because he may have feared having his probation revoked. *Id.* at 310-311. While the trial court permitted the defendant to ask the witness whether he was biased, it excluded the convictions, relying on a state rule of evidence barring admission of juvenile convictions. *Ibid.* In his subsequent testimony, the witness denied ever having been the subject of a law enforcement interrogation before, a false assertion that the defendant was then unable to challenge. *Id.* at 313-314. The Supreme Court reversed, holding that the exclusion of the witness's convictions violated the Confrontation Clause. *Id.* at 320. The Court explained that, "[w]hile counsel was permitted to ask Green *whether* he was biased, counsel was unable to make a record from which to argue *why* Green might have been biased," and that "the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness." *Id.* at 318.

Unlike in *Davis*, Givhan was fully able to "make a record from which to argue *why*" Christine and Shakela "might have been biased." 415 U.S. at 318. On

cross-examination of the two women, defense counsel made clear that the women had been arrested in Fort Wayne, that they were facing charges that could send them to jail, and that they were set free in exchange for agreeing to cooperate with law enforcement in their efforts to "get Givhan." Nor was there any danger that the jury believed that Givhan's counsel was "engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness." *Ibid.* The jury was fully apprised that the women avoided criminal charges by implicating Givhan.

Nor does *Olden* v. *Kentucky* support Givhan's argument. 488 U.S. 227 (1988) (per curiam). In that case, the defendant, accused of rape, maintained that the sex was consensual. *Id.* at 229, 232. He sought to introduce evidence that the victim had fabricated the rape story to protect her relationship with another man; specifically, he wished to introduce evidence that the victim and the other man were cohabitating. *Id.* at 229-230. The trial court held that the evidence of cohabitation *did not implicate the state's rape shield law*, but excluded the evidence on the basis that it was unduly prejudicial because the victim was a white woman living with a black man. *Id.* at 230-231. The Supreme Court reversed, holding that "[s]peculation as to the effect of jurors' racial biases cannot justify exclusion of cross-examination with such strong potential to demonstrate the falsity of [the victim]'s testimony." *Id.* at 232.

Olden is distinguishable. First and foremost, in *Olden*, the exclusion of the evidence effectively prohibited the defendant from pursuing his defense that the victim was motivated to lie to protect her relationship with another man. *Id.* at 232. In contrast, here, Givhan was permitted to—and did—present evidence to support the defense theory that Christine and Shakela were motivated to lie about Givhan to avoid going to jail. In addition, the Court's reason for excluding the evidence in *Olden*—mere "speculation as to the effect of jurors' racial biases"—pales in comparison to the government's vital interest here: protecting the victims from the "invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details" and "encourag[ing] victims of sexual misconduct to institute and to participate in legal proceedings against alleged offenders." Fed. R. Evid. 412, Advisory Committee Notes, 1994 Amendments. These concerns are at the very heart of Rule 412.

Givhan also cites *Lewis* v. *Wilkinson*, 307 F.3d 413, 417-418 (6th Cir. 2002), to support his argument that the exclusion of motive evidence violates a defendant's constitutional rights. (Br. 23-24). In *Lewis*, this Court reversed a district court's denial of habeas relief where the trial court, relying on a state rape shield statute, had excluded a portion of an accuser's diary that suggested not only that she had consented to sexual relations with the defendant, but that she had accused him of rape because she was frustrated with herself for "giving in" to men

sexually. 307 F.3d at 417-418. The Court held that the excluded excerpt "went to a different type of motive than that implied by the other evidence, which went mostly to [the accuser]'s pecuniary interests." *Id.* at 422. Because the district court's exclusion of the excerpt had effectively precluded the defense from pursuing an entire motive theory, the defendant's Sixth Amendment confrontation rights were violated. *Ibid.* In contrast, here, Givhan was permitted to introduce extensive evidence of the victims' motive to avoid charges after their arrest in Fort Wayne. As such, *Lewis* does not support Givhan's argument.

D. Even If The District Court Erred In Excluding Evidence Of The Nature Of The Victims' Fort Wayne Arrest, Any Error Was Harmless

Even if the district court erred in prohibiting Givhan from bringing out the nature of the victims' arrest in Fort Wayne, Givhan's extensive impeachment of Christine's and Shakela's credibility and the compelling evidence to support the convictions would render any error harmless beyond a reasonable doubt. The Supreme Court has held that "the constitutionally improper denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation Clause errors, is subject to * * * harmless-error analysis." *Van Arsdall*, 475 U.S. at 684.

As discussed above, there can be no question that the jury was aware that the two women had a motive to implicate Givhan to protect themselves from criminal charges. Givhan's cross-examinations of Christine and Shakela made clear that the women were arrested in Fort Wayne, were questioned about Givhan, and were

released in exchange for their agreement to cooperate with law enforcement in their investigation into Givhan. It is simply implausible that the jurors would have reached a different conclusion about the women's motive had they known that the alleged crime for which they were arrested was prostitution, rather than some other serious offense.

Moreover, the evidence supporting Counts 1 and 2—the only counts relating to Christine and Shakela—was compelling. As for Count 1, Interstate Transportation for Prostitution, the government needed to show *only* that Givhan transported Christine and Shakela to another State (Kentucky), and that he did so intending for them to engage in prostitution. See 18 U.S.C. 2421. Givhan never seriously disputed this at trial; indeed, his entire closing argument barely touched upon the transportation charges, other than to assert that all of the victims were liars. (Transcript, R. 144, PageID# 1857-1858). But the women's testimony about these trips was corroborated by hotel receipts from the places they traveled, which showed that Givhan was there with them. See (Transcript, R. 141, PageID# 1231, 1239-1241; Transcript, R. 142, PageID# 1419-1420, 1432-1435; Gov't Ex. 22, Clarion Inn receipt; Gov't Ex. 21, Red Roof Inn receipt; Gov't Ex. 44, La Quinta Inn receipt; Excerpts from Gov't Ex. 31A, Instagram postings). This evidence demonstrated, beyond a reasonable doubt, that Givhan transported Christine and Shakela from Michigan to Kentucky for prostitution; it would not have been

undermined by evidence that the women were later arrested for prostitution in Fort Wayne.

There was also compelling evidence to prove Count 2—that Givhan employed threats and coercion to cause Christine to engage in commercial sex acts. Christine testified at length about Givhan's total control over her life, and the threats he used to force her to continue to engage in commercial sex for his benefit. See *supra* 6-11. Christine's testimony was corroborated in many respects. The government introduced several documents that corroborated her story, including hotel receipts and medical records. (Gov't Exs. 21-22, 44 (hotel receipts), 38 (medical records)). Givhan's Instagram posts were consistent with the places that Christine testified Givhan took her. (Excerpts from Gov't Ex. 31A, Instagram postings; Transcript, R. 142, PageID# 1537-1543). The clerk at the Hawthorn Suites in Warren testified that Christine appeared "scared," "had tears in her eyes," and told him that "the guy she's with is crazy," before asking him to hide her. (Transcript, R. 143, PageID# 1639). Christine's mother, Julia, testified that when she picked Christine up at the hotel, Christine appeared "[s]cared" and was "crying." (Transcript, R. 100, PageID# 573). When she arrived at the hotel, Christine ran to the car, got in, and yelled for her to "[g]o, go, go." (Transcript, R. 100, PageID# 574). This corroborating evidence about Givhan's coercion and threatening behavior was compelling and uncontradicted.

For these reasons, the limits that the district court placed on the cross-examination of Christine and Shakela could not plausibly have changed the outcome of the trial. The proof adduced at trial to support Counts 1 and 2 was compelling, and Givhan's counsel was effective in eliciting evidence to support his theory that Christine and Shakela were motivated to implicate Givhan to avoid criminal charges. Knowing that the crime of arrest was prostitution, rather than some other serious offense, would not have made the jurors any less likely to believe the women. Accordingly, even if the district court erred in excluding the precise nature of the two women's arrest in Fort Wayne, such error was harmless.

II

THE DISTRICT COURT'S RULE 412 RULINGS DID NOT VIOLATE GIVHAN'S RIGHT TO PRESENT A COMPLETE DEFENSE

A. Standard Of Review

Givhan argues (Br. 40-48) that the district court violated his right to present a complete defense because it permitted the government to question Christine and Xia about other prostitution but limited his cross-examination of all three victims on the subject under Rule 412. This Court reviews a district court's decision to limit cross-examination for abuse of discretion, even where a defendant argues that the limitation violates his right to present a complete defense. *United States* v. *Blackwell*, 459 F.3d 739, 752 (6th Cir. 2006).

B. Background

Before trial, the government informed the district court that Xia would testify that she met Givhan through her former pimp. (Transcript, R. 138, PageID# 882; Transcript, R. 139, PageID# 1096). The government explained that this testimony would not contravene the court's prior Rule 412 ruling, see *supra* 3-4, 19-20, because its purpose would be to explain how Xia met Givhan and not to show Xia's sexual behavior or predisposition. (Transcript, R. 139, PageID# 1097-1098). The government further explained that Rule 412 would, however, prevent Givhan from asking specific questions about Xia's prior prostitution to show her sexual predisposition. (Transcript, R. 139, PageID# 1098). Givhan countered that he should be allowed to cross-examine Xia about her prostitution for her former pimp because that activity was "part of the story of this case." (Transcript, R. 139, PageID# 1101). The district court deferred a ruling on the issue but permitted the parties to preview this testimony during opening statements. (Transcript, R. 139, 1103-1104). The government began its opening statement by summarizing Xia's expected testimony, including that she met Givhan in 2013 when he "purchased" her from another pimp. (Transcript, R. 139, PageID# 1107-1110).

After opening statements, the district court ruled that the government would be permitted to bring out that Xia had met Givhan through her former pimp. (Transcript, R. 139, PageID# 1132-1133). The court reasoned that the evidence

did not "constitute * * * evidence offered to prove that a victim engaged in other sexual behavior" and thus did not implicate Rule 412. (Transcript, R. 139, PageID# 1132-1133). The court limited questioning to the fact that Xia was working for another pimp when she met Givhan. (Transcript, R. 139, PageID# 1133). But before Xia testified, she recanted her story that she met Givhan through her former pimp. (Transcript, R. 139, PageID# 1175-1180; Transcript, R. 140, PageID# 1188-1189). She later explained in her testimony that she had confused Givhan with her other pimp and had not met Givhan until spring of 2015. (Transcript, R. 143, PageID# 1645-1647, 1735-1736).

The government also elicited testimony from Christine that during the time she escaped from Givhan, she posted an advertisement for commercial sex on *Backpage* and saw prostitution clients on her own. (Transcript, R. 141, PageID# 1244-1245). She testified that her last client of the day ended up being a pimp whom Givhan knew, and that pimp told Givhan where to find her. (Transcript, R. 141, PageID# 1245-1247). Givhan did not object to this line of questioning at the time, but later argued to the district court that, because the government questioned Christine about other prostitution in Kalamazoo on direct, he should be able to bring out that Christine's arrest in Fort Wayne was for prostitution. (Transcript, R. 141, PageID# 1333-1340). The district court again ruled that Rule 412 prohibited

Givhan from questioning Christine about the nature of the charges she was facing in Fort Wayne. (Transcript, R. 141, PageID# 1340-1341).

C. The District Court's Rule 412 Rulings Were Proper And Did Not Deny Givhan The Opportunity To Present A Complete Defense

The district court's Rule 412 rulings were proper and did not deny Givhan his right to present a complete defense. As set forth above, in cases involving alleged sexual misconduct, Rule 412 prohibits the admission of evidence offered to prove that a victim engaged in other sexual conduct or to prove a victim's sexual disposition. Fed. R. Evid. 412(a). An exception to this Rule exists where its application would violate a defendant's constitutional rights. Fed. R. Evid. 412 (b)(1)(C). Givhan argues (Br. 41-48) that the district court's Rule 412 rulings—that permitted the government to elicit testimony about other prostitution by Christine and Shakela but limited the questions Givhan could ask the victims about the subject—violated his right to present a complete defense. This argument fails.

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane* v. *Kentucky,* 476 U.S. 683, 690 (1986) (internal quotation marks and citations omitted). However, "[w]hile the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense, a defendant does not have an unfettered right to offer evidence

that is incompetent, privileged, *or otherwise inadmissible under standard rules of evidence*." *United States* v. *Cox*, 871 F.3d 479, 490 (6th Cir. 2017) (emphasis added; internal quotation marks and citations omitted), petition for cert. pending, No. 17-7126 (filed Dec. 15, 2017). Rather, "[t]he right to present a complete defense" means only that evidentiary restrictions "cannot be 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'" *Wynne* v. *Renico*, 606 F.3d 867, 870 (6th Cir. 2010) (quoting *United States* v. *Scheffer*, 523 U.S. 303, 308 (1998)), cert. denied, 563 U.S. 974 (2011). Accordingly, this Court has recognized that "erroneous evidentiary rulings rarely constitute a violation of a defendant's right to present a defense." *United States* v. *Kerley*, 784 F.3d 327, 342 (6th Cir.) (quoting *United States* v. *Hardy*, 586 F.3d 1040, 1044 (6th Cir. 2009)), cert. denied, 136 S. Ct. 350 (2015).

Givhan originally sought to introduce evidence of the victims' other acts of prostitution for purposes expressly prohibited by Rule 412. In his pretrial motion to introduce evidence of other prostitution, Givhan argued that "[a] jury hearing that the witnesses were still engaging in prostitution, even after Mr. Givhan is incarcerated, may well conclude that there was no force, fraud or threat involved." (Motion to Introduce Evidence, R. 54, PageID# 176). This Court squarely rejected that argument in *United States* v. *Mack*, 808 F.3d 1074, 1084 (6th Cir. 2015), cert. denied, 136 S. Ct. 1231 (2016); see also *United States* v. *Carson*, 870 F.3d 584,

595-596 (7th Cir. 2017) ("[E]vidence about the victim's prior commercial sex acts was irrelevant to the question of whether [the defendant] knew or recklessly disregarded the fact that his own use of force, threats, and coercion caused the victims to engage in commercial sex acts during their time with him."); *United States* v. *Gemma*, 818 F.3d 23, 34 (1st Cir.), cert. denied, 137 S. Ct. 410 (2016); *United States* v. *Roy*, 781 F.3d 416, 420 (8th Cir. 2015). The district court soundly rejected this argument, (Memorandum Op. and Order, R. 73, PageID# 447-448; Order, R. 82, PageID# 479-483), and Givhan has abandoned it.

Givhan changed tactics in his reply brief and in his Motion to Reconsider, arguing that he wished to introduce evidence of other prostitution for purposes other than those prohibited by Rule 412. (SEALED Reply Br., R. 67, PageID# 266-270); Motion to Reconsider, R. 81, PageID# 473-478). But he has offered no purpose whatsoever, either in pretrial motions, during trial, or in his opening brief on appeal, as to why he should have been able to introduce other instances of sexual behavior or prostitution *by Xia*, other than because it was "part of the story of this case." (Transcript, R. 139, PageID# 1101). He has not suggested any legitimate purpose for which Xia's prior prostitution could be introduced, or explained how it would undermine her credibility with respect to Counts 3 and 4. And Givhan's argument about the district court's limitations on his cross-examination of Christine and Shakela (Br. 46-48), is nothing more than a

repackaged version of his Confrontation Clause argument, which fails for the reasons already discussed. See *supra*.

That the district court permitted the government to elicit limited testimony about the victims' other prostitution for *legitimate* purposes does not, as Givhan argues (Br. 47-48), open the door for him to flout Rule 412. The district court permitted the government to introduce evidence that Xia had previously worked with another pimp to show how Xia met Givhan. (Transcript, R. 138, PageID# 882; Transcript, R. 139, PageID# 1096). As the district court recognized, such purpose does not implicate Rule 412. (Transcript, R. 139, PageID# 1132-1133). After opening statements, Xia informed the government that she had been mistaken, and that she had confused Givhan with her former pimp. Accordingly, expecting (correctly) that the defense would cross-examine her on her changing story, the government brought out on direct examination that Xia had confused Givhan with her former pimp. (Transcript, R. 143, PageID# 1645-1647, 1735-1736). At no time did the government seek to introduce this evidence to prove that Xia engaged in other sexual behavior or to prove her sexual predisposition.[5]

---

[5] Givhan asserts that the government "surpassed" the limitations that the district court imposed on Xia's testimony by eliciting evidence of various ways in which Xia's former pimp abused her. Br. 42-43. But these questions were designed to clarify which conduct that the government had discussed in its opening statement was attributable to Xia's former pimp as opposed to Givhan. They simply do not implicate Rule 412. Givhan offers no theory of why this particular

(continued…)

Accordingly, the government's introduction of this evidence did not implicate Rule 412.

Similarly, the government did not offer evidence of Christine's prostitution in Kalamazoo after her escape from Givhan for either of the purposes prohibited by Rule 412. (Transcript, R. 141, PageID# 1243-1247). Rather, the government brought this out to show how Givhan found Christine again after she fled—her last prostitution client of the day ended up being a pimp and essentially delivered her back to Givhan. (Transcript, R. 141, PageID# 1336). And the district court did not prevent Givhan from cross-examining Christine about this prostitution; indeed, defense counsel cross-examined her extensively about it, without any objection from the government. (Transcript, R. 141, PageID# 1301-1303, 1356, 1366-1367, 1387).

Givhan fails to show that any of the district court's rulings about the admissibility of other evidence of prostitution were incorrect. To compensate, he has fashioned a tit-for-tat rule of admissibility that finds no support in the Federal Rules of Evidence or in the case law. Givhan's argument that the district court's

---

(…continued)
line of questioning—aimed at clarifying what Givhan did *not* do to Xia—could possibly be harmful to him.

evidentiary rulings collectively denied him his right to present a complete defense should be rejected.

D. Even If The District Court Abused Its Discretion, Any Error Was Harmless

Even if the district court's Rule 412 rulings denied Givhan the opportunity to present a complete defense, such error was harmless. See *Fleming* v. *Metrish*, 556 F.3d 520, 536 (6th Cir.) (evidentiary rulings denying the right to present a complete defense are subject to harmless error analysis), cert. denied, 558 U.S. 843 (2009). As explained *supra*, the government's proof for the counts relating to Christine and Shakela (Counts 1 and 2), would not have been undermined by permitting Givhan to elicit testimony that the women's arrest in Fort Wayne was for prostitution. And, as noted above, the defense has never explained how asking Xia for additional detail about her prior prostitution could have undermined her credibility with the jury in any legitimate way—*i.e.*, one that did not implicate Rule 412. It confounds reason to conclude that the jury, which knew that Xia had engaged in prostitution before meeting Givhan, would have changed its view of her credibility had it heard further details of her prior prostitution.

In any case, there was ample evidence supporting the counts relating to Xia (Counts 3 and 4), which charged Givhan with interstate transportation of an individual with intent to engage that individual in prostitution. Xia testified that almost immediately after she met Givhan, he took her to Indiana and then to

Louisville, Kentucky. (Transcript, R. 143, PageID# 1667-1670). Upon arriving in Kentucky, Givhan posted advertisements for Xia on *Backpage* and another website, *Cityvibe*, and Xia did engage in prostitution multiple times with individuals who responded to these advertisements. (Transcript, R. 143, PageID# 1670-1673, 1677). Givhan set the prices for each sexual service. (Transcript, R. 143, PageID# 1678). Many aspects of Xia's testimony were corroborated. The government introduced a receipt from the Red Roof Inn in Louisville, Kentucky, along with Givhan's Instagram posts from Louisville and text messages between Givhan and Xia. (Gov't Ex. 21, Red Roof Inn receipt; Excerpts from Gov't Ex. 31A, Instagram postings; Gov't Ex. 4F, text messages). While in Louisville, Xia made almost $2000 through commercial sex. As a reward, Givhan took her to a clothing store, Bebe, and purchased her a dress. (Transcript, R. 143, PageID# 1682-1683). The government introduced a video of Givhan and Xia taken at the Bebe store. (Transcript, R. 143, PageID# 1683).

On April 29, 2015, Givhan took Xia back to Michigan to attend therapy. (Transcript, R. 143, PageID# 1683-1684). Xia testified that the next day, Givhan drove her back to Louisville, where the two checked in to a hotel. (Transcript, R. 143, PageID# 1696-1700). Hotel receipts corroborated this testimony. (Transcript, R. 143, 1696-1699; Gov't Ex. 16A, America's Best Value Inn & Suites receipt; Gov't Ex. 34, identification card). Again, Givhan posted an

advertisement for commercial sex on *Backpage*, and Xia engaged in commercial sex with individuals in response to that advertisement. (Transcript, R. 143, PageID# 1700-1701). On May 2, 2015, Xia was arrested for prostitution as part of an undercover sting by local law enforcement in Louisville. (Transcript, R. 143, PageID# 1708-1710; Transcript, R. 139, PageID# 1137-1147; Transcript, R. 142, PageID# 1508-1509). The officer who arrested her testified that he witnessed Givhan walk in front of Xia's hotel room while he waited for backup. (Transcript, R. 139, PageID# 1146-1147).

In sum, there was overwhelming evidence that Givhan transported Xia across state lines with the intent that she engage in prostitution on two occasions—the only evidence necessary to convict Givhan on Counts 3 and 4. Xia's testimony is corroborated by hotel receipts, printouts from *Backpage*, text messages between Xia and Givhan, surveillance video, and testimony from the officer who arrested her. In light of such extensive corroborating evidence, Givhan does not seriously dispute that he transported Xia to Louisville for prostitution. Indeed, in his closing argument, defense counsel *admitted* that Givhan was with Xia in Louisville on May 2, 2015. (Transcript, R. 144, PageID# 1859). Moreover, the jury was fully apprised that Xia had been a prostitute before she met Givhan, and that she had confused him with her former pimp. The jury simply chose to believe her anyway.

Accordingly, even if the district court had erred in its rulings under Rule 412, any such error was harmless.

III

GIVHAN CANNOT ESTABLISH CUMULATIVE ERROR

A. Standard Of Review

"The cumulative effect of errors that are harmless by themselves can be so prejudicial as to warrant a new trial." *United States* v. *Adams*, 722 F.3d 788, 832 (6th Cir. 2013) (citation omitted). "In order to obtain a new trial based on cumulative error, defendants must show that the combined effect of individually harmless errors was so prejudicial as to render their trial fundamentally unfair." *Ibid.* (alterations and citation omitted).

B. Defendant Has Waived His Cumulative Error Argument

Givhan has waived his cumulative error argument by failing to develop it adequately in his opening brief. The cumulative error section of his brief (Br. 48) consists of only one paragraph, and his entire explanation for why the cumulative error doctrine should apply here is limited to a single sentence: "No trial can be fair where the defendant was denied the right to cross-examine the key witnesses against him about their motives simply because their arrest was for prostitution and the government repeatedly introduced other acts of prostitution whenever it suited its purposes." This sentence does not comply with the Federal Rules of Appellate

Procedure, which direct that an argument must contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Fed. R. App. P. 28(a)(8)(A). Because Givhan has failed to meaningfully brief his cumulative error argument, he has waived it. See *United States* v. *Elder*, 90 F.3d 1110, 1118 (6th Cir.) ("[I]t is a settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.") (internal quotation marks and citations omitted), cert. denied, 519 U.S. 1016 (1996), and 519 U.S. 1131 (1997).

C. Defendant Cannot Establish Cumulative Error

Even if Givhan did not waive his cumulative error argument, it nevertheless fails because he has failed to demonstrate *any* error in the district court's evidentiary rulings. See *United States* v. *Sypher*, 684 F.3d 622, 628 (6th Cir. 2012) ("Where, as here, no individual ruling has been shown to be erroneous, there is no 'error' to consider, and the cumulative error doctrine does not warrant reversal.") (citation omitted), cert. denied, 568 U.S. 1257 (2013). But even if the challenged rulings were erroneous, Givhan cannot show that they deprived him of a fundamentally fair trial. The reasonable limits that the district court placed on cross-examination could not realistically have affected the jury's assessment of the victims' credibility or undermined the compelling evidence of guilt on all four counts. See *United States* v. *Collins*, 799 F.3d 554, 599 (6th Cir.) (two identified

errors were collectively harmless, "particularly in light of the substantial evidence of [defendant]'s guilt"), cert. denied, 136 S. Ct. 601 (2015); *United States* v. *Mays*, 69 F.3d 116, 123 (6th Cir. 1995), cert. denied, 517 U.S. 1246 (1996). Accordingly, Givhan's cumulative error argument fails.

IV

THE DISTRICT COURT DID NOT PLAINLY ERR IN REJECTING GIVHAN'S ARGUMENT FOR A LOWER SENTENCE BASED ON AN ARTICLE ABOUT ALLEGED RACIAL DISPARITIES IN SEX TRAFFICKING PROSECUTIONS

A. Standard Of Review

In *United States* v. *Bostic*, 371 F.3d 865, 872-873 (6th Cir. 2004), this Court held that "district courts, after pronouncing the defendant's sentence * * * [must] ask the parties whether they have any objections to the sentence just pronounced that have not previously been raised," and "[i]f a party does not clearly articulate any objection and the grounds upon which the objecton is based, when given this final opportunity to speak, then that party * * * will face plain error review on appeal." Givhan acknowledges that the district court asked the *Bostic* question, and that plain error review applies. Br. 50.

Under the plain error standard, Givhan "must show (1) error (2) that was obvious or clear, (3) that affected his substantial rights, and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings." *United States*

v. *Al-Maliki*, 787 F.3d 784, 791 (6th Cir.) (internal quotation marks, citations, and alterations omitted), cert. denied, 136 S. Ct. 204 (2015).

B. Background

Givhan submitted with his Sentencing Memorandum an article about alleged racial disparities in the prosecution of sex trafficking crimes. (Def. Sentencing Mem., R. 110, PageID# 689-708).[6] Relying on this article, Givhan argued at his sentencing hearing that the court should give him a lower sentence based on his race. (Transcript, R. 136, Page ID# 846-848). Stating that it had reviewed the parties' submissions and "carefully considered the arguments of counsel and the 3553 factors," the district court sentenced Givhan to 235 months' incarceration, well within the Guidelines range. (Transcript, R. 136, PageID# 852, 863-865).[7] The court asked whether there were "any objections to the sentence as pronounced which have not been previously raised." (Transcript, R. 136, PageID# 865). Givhan did not object to the adequacy of the court's explanation. (Transcript, R. 136, PageID# 865).

---

[6] Givhan cited (Br. 51), Kathleen G. Williamson and Anthony Marcus, *Black Pimps Matter: Racially Selective Identification and Prosecution of Sex Trafficking in the United States*, Third Party Sex Work and Pimps in the Age of Anti-Trafficking 177-196 (2017) (see also Defendant's Sentencing Mem., R. 110-1, PageID# 689-708).

[7] Givhan's Guidelines range was 210 months to 262 months. (Transcript, R. 136, PageID# 838).

C. The District Court Did Not Commit Plain Error In Failing To Address Givhan's Argument That The District Court Should Have Granted A Variance Or Downward Departure Based On His Race

1. The District Court Did Not Err Because Givhan's Argument Was Frivolous

Givhan argues (Br. 51, 54) that the district court committed procedural error in failing to consider his argument for a downward departure based on one article about alleged racial disparities in the prosecution of sex trafficking crimes. The district court did not err in failing to consider Givhan's argument for a downward departure based on his race. On the contrary, if the district court *had* considered Givhan's race in sentencing him, such action would have constituted reversible error.

Section 5H1.10 of the United States Sentencing Guidelines states that race is "not relevant in the determination of a sentence." U.S.S.G. § 5H1.10. The Supreme Court has held that district courts are "forbidden" from using the factors listed in Section 5H1.10 as a basis for departure. *Koon* v. *United States*, 518 U.S. 81, 95-96 (1996). Accordingly, this Court has held that if a district court "depart[s] from the Sentencing Guidelines based upon a prohibited factor (such as a defendant's race, sex, national origin, creed, religion, or socio-economic status, factors prohibited by U.S.S.G. § 5H1.10) this Court's analysis is complete and the sentence must be reversed." *United States* v. *Barber*, 200 F.3d 908, 911 (6th Cir. 2000); see also *United States* v. *Bynum*, 3 F.3d 769, 774 (4th Cir. 1993), cert.

denied, 510 U.S. 1132 (1994) (rejecting argument that disparate impact on Blacks of 100-to-1 crack cocaine disparity justified a downward departure in sentencing Black defendant).[8] Because this Court has soundly rejected the argument that race should play any role in sentencing, the district court was not obligated to consider it in sentencing Givhan; in fact, the court was prohibited from doing so under the Sentencing Guidelines and binding precedent. See *United States* v. *Gapinski*, 561 F.3d 467, 474 (6th Cir. 2009) ("[Defendant]'s argument for a variance based upon his rehabilitative efforts while in prison was an argument that this court has previously rejected. * * * We therefore cannot say that the sentence was procedurally unreasonable on the basis of this argument.").

Even if the district court had not been *prohibited* from considering Givhan's racial argument, its failure to do so would not come close to constituting plain error. The article on which Givhan relies discussed racial disparities in sex trafficking *prosecutions*; it did not relate to *sentencing* disparities. More importantly, it analyzed racial disparities in general, and had nothing to do with the specific actions *of this defendant*. See 18 U.S.C. 3553(a) ("The court, in

---

[8] See also *United States* v. *Martin*, 221 F.3d 52, 57 (1st Cir. 2000); *United States* v. *Maxwell*, 25 F.3d 1389, 1401 (8th Cir.) ("[W]e reiterate that while a racially disparate impact may be a serious matter, it is * * * not a basis upon which a court may rely to impose a sentence outside of the applicable Guidelines range."), cert. denied, 513 U.S. 1031 (1994).

determining the particular sentence to be imposed, shall consider * * * the nature and circumstances of the offense and the history and characteristics of the defendant."). The district court considered the information submitted by the parties, weighed the Section 3553 factors, and provided a detailed explanation of how it determined an appropriate sentence. (Transcript, R. 136, PageID# 863-865). There was no error.

2. Even If The District Court Erred In Failing To Address Givhan's Argument For A Downward Departure Based On His Race, Givhan's Sentence Should Not Be Reversed For Plain Error

Even if the district court had erred in failing to address Givhan's argument for a downward departure based on the article about racial disparities in sex trafficking prosecutions, such error would not have been "plain." "An error is 'plain' when, at a minimum, it 'is clear under current law.'" *Al-Maliki*, 787 F.3d at 794 (quoting *United States* v. *Olano*, 507 U.S. 725, 734 (1993)). The United States is aware of no precedent indicating that a sentencing court must consider generalized statistical research about racial disparities in prosecution of sex trafficking cases (or in any criminal cases), and indeed Givhan points to none. And, given that the article's focus was on disparities in *prosecutions* and not *sentencing*, any relevance to Givhan's case would be tenuous at best. On the other hand, what was likely "clear under current law" to the district court, *Olano*, 507

U.S. at 734, was that it was *prohibited* under the Sentencing Guidelines and this Court's precedent from considering Givhan's race in its sentencing decision.

Even if Givhan could show that the district court committed plain error, to obtain a reversal of a sentence on appeal, he must also show that the error "affected [his] substantial rights" and "seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *United States* v. *Coppenger*, 775 F.3d 799, 803 (6th Cir. 2015). Givhan cannot meet this standard. It is well-established that sentences within the federal sentencing guidelines are presumptively reasonable. *United States* v. *Williams*, 436 F.3d 706, 707-708 (6th Cir. 2006), cert. denied, 551 U.S. 1163 (2007). Givhan does not contest the district court's guidelines calculation or argue that his sentence did not fall within the applicable range. It is simply implausible that one article generally discussing alleged racial disparities in the prosecution (not sentencing) of sex trafficking offenses could have affected Givhan's sentence. Accordingly, the district court's failure to address this article—even if erroneous—did not affect his substantial rights or the fairness and integrity of his trial.

CONCLUSION

This Court should affirm Givhan's convictions and sentence.

Respectfully submitted,

JOHN M. GORE
Acting Assistant Attorney General

s/ Elizabeth P. Hecker
TOVAH R. CALDERON
ELIZABETH P. HECKER
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-5550

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 12,752 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in Times New Roman, 14-point font.

s/ Elizabeth P. Hecker
ELIZABETH P. HECKER
Attorney

Date: December 22, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2017, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Elizabeth P. Hecker
ELIZABETH P. HECKER
Attorney

ADDENDUM DESIGNATING DISTRICT COURT DOCUMENTS

Appellee United States designates the following documents from the electronic record in the district court:

Record Entry Number	Description	PageID# Range
1	Indictment	1-7
54	Motion to Introduce Evidence	175 - 177
67	SEALED Reply Br.	266 - 271
73	Memorandum Op. and Order	446 - 453
74	Order	454 - 456
81	Motion to Reconsider	473 - 478
82	Order	479 - 483
100	Transcript	567 - 580
102	Motion for a New Trial	584 - 587
110	Def. Sentencing Mem.	685 - 688
110-1	Article	689 - 708
112	Order	711 - 719
117	Judgment	724 - 731
120	Notice of Appeal	738
135	Transcript	812 - 833
136	Transcript	834 - 868
138	Transcript	872 - 1093
139	Transcript	1094 - 1185
140	Transcript	1186 - 1208
141	Transcript	1209 - 1405
142	Transcript	1406 - 1613
143	Transcript	1614 - 1764
144	Transcript	1765 - 1879