

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PRINCE BIXLER,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not object to defendant-appellant's request for oral argument if it would aid this Court's review.

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No. 21-5194

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Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

This appeal is from a final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. This Court has jurisdiction under 18 U.S.C. 3742 and 28 U.S.C. 1291. The district court entered final judgment on February 24, 2021. (Judgment, R. 198, PageID# 1698).¹ Defendant filed a timely notice of appeal two days later. (Notice of Appeal, R. 200, PageID## 1707-1708).

¹ “R. __” refers to documents, by number, on the district court docket sheet. “PageID# __” refers to page numbers in the paginated electronic record. “Br. __”

(continued...)

INTRODUCTION AND STATEMENT OF THE ISSUES

For several years, defendant Prince Bixler garnered more than \$300,000 from commercial sex work facilitated through Backpage.com (Backpage), an online forum that permitted sex workers to post advertisements soliciting clients. Bixler, however, did not earn this money himself. Instead, he befriended homeless, drug-addicted women and made them entirely dependent upon him. He then forced them to prostitute themselves to feed their drug addictions and beat them when they broke his rules.

A jury convicted Bixler of numerous sex trafficking, witness tampering, gun, and drug offenses. The district court sentenced Bixler to 432 months' imprisonment and ordered \$333,270 in restitution.

Bixler raises six issues on appeal. We address them chronologically, as follows:

1. Whether the district court abused its discretion by denying Bixler's motion to continue his trial based on speculative concerns about a local rally.
2. Whether the district court clearly erred by allowing the United States to strike a prospective juror whose family and friends knew Bixler.

(...continued)

refers to page numbers in defendant's opening brief. "GX __" refers to the government's trial exhibits. Cited exhibits are included in the Appendix to Brief for the United States (App.), filed concurrently.

3. Whether the district court abused its discretion by allowing expert testimony about the physical and psychological effects of drug addiction and withdrawal.

4. Whether the district court abused its discretion by denying Bixler unfettered cross-examination into his victims' sexual histories.

5.a. Whether there was sufficient evidence for a reasonable jury to find that Bixler used force or coercion to cause three women to engage in commercial sex acts.

5.b. Whether there was sufficient evidence for a reasonable jury to find that Bixler intimidated, threatened, or corruptly persuaded two women with the intent to influence their grand jury testimony.

6. Whether the district court abused its discretion when it calculated Bixler's total offense level and the restitution amount.

STATEMENT OF THE CASE

1. Procedural Background

A federal grand jury returned a 16-count indictment charging Bixler with crimes related to his sex-trafficking scheme. (Second Superseding Indictment, R. 32, PageID## 181-189). This indictment contained four counts for forcing and coercing four women—Savanah G., Savanah E., Kaitlyn M., and Sydney M.—to commit commercial sex acts, in violation of 18 U.S.C. 1591 (Counts 1-4); two

counts for intimidating, threatening, and corruptly persuading two other women—Adrienne R. and Amie P.—to influence their grand jury testimony, in violation of 18 U.S.C. 1512 (Counts 5-6); one count for using facilities in interstate commerce to manage his trafficking scheme, in violation of 18 U.S.C. 1952 (Count 7); six counts for distributing drugs, in violation of 21 U.S.C. 841 (Counts 8-11, 14-15); and three counts for possessing firearms as a felon, in violation of 18 U.S.C. 922 (Counts 12-13, 16). (Second Superseding Indictment, R. 32, PageID## 181-189; Trial Transcript (Tr.), R. 217, PageID## 3071, 3362-3363).

Bixler's case proceeded to trial. (Tr., R. 213, PageID# 2186). After the government presented its case, Bixler moved for judgment of acquittal on all counts. (Tr., R. 217, PageID## 3066-3108). The court denied the motion as to all but Count 4, which charged Bixler with trafficking Sydney M. (Minute Entry, R. 151, PageID## 854-855). Bixler renewed his motion for judgment of acquittal at the close of all evidence, and the court denied the motion. (Tr., R. 217, PageID## 3388-3389). The jury convicted Bixler of all of remaining counts. (Tr., R. 218, PageID## 3520-3523).

The court sentenced Bixler to a below-Guidelines sentence of 432 months' imprisonment and ordered him to pay \$333,270 in restitution. (Sentencing Transcript (Sent.), R. 221, PageID## 3985, 3966; Judgment, R. 198, PageID##

1700-1701, 1704). Bixler timely appealed. (Notice of Appeal, R. 200, PageID## 1707-1708).

2. *Bixler's Sex Trafficking Scheme*

Bixler orchestrated a trafficking scheme in which he offered housing to destitute women struggling with drug addiction. Once they became dependent on him for shelter, food, and drugs, he demanded that they prostitute themselves for his financial benefit. Bixler forced his victims to comply with his demands by withholding drugs and by beating them and other women in their presence.

Viewed in the light most favorable to the verdict, the evidence at trial established the following:

a. *Bixler Preyed On Vulnerable Women*

Bixler chose to victimize particularly vulnerable women. Each of the victims had a similar story: right before becoming involved with Bixler, they were homeless, had recently lost their support system, and could not support themselves. Kaitlyn M. had been living with her boyfriend's family but had to leave when he was arrested. (Tr., R. 214, PageID## 2261-2262). She moved into a rehabilitation facility but later relapsed and absconded from the facility. (Tr., R. 214, PageID## 2260-2261). While she was homeless, someone stole all of her belongings. (Tr., R. 214, PageID## 2262-2264). Savanah G. and Savanah E. were also homeless and addicted to drugs before meeting Bixler. (Tr., R. 214, PageID## 2738, 2381-

2383, 2428, 2431, 2455). Bixler met Savannah G. when she was drunk and seemingly stranded in a parking lot, and encountered Savannah E. when she was asleep on the side of a road with nowhere to go. (Tr., R. 217, PageID## 3149, 3159, 3176).

Bixler manipulated these women's vulnerabilities to gain power over them. He gave them a place to live and started sexual relationships with them. (Tr., R. 214, PageID## 2273, 2285-2286, 2380-2384, 2432; Tr., R. 215, PageID# 2641; Tr., R. 216, PageID## 2863-2865). He gave them drugs daily, sometimes administering them himself. (Tr., R. 214, PageID## 2269-2270, 2274, 2369-2370, 2385, 2432-2433; Tr., R. 215, PageID## 2637-2638; Tr., R. 216, PageID## 2832, 2861). Bixler manipulated his victims until they depended on him for everything. (See, *e.g.*, Tr., R. 214, PageID# 2387).

While Bixler was initially kind to his victims, that quickly changed once he had them within his control. (See, *e.g.*, Tr., R. 214, PageID## 2272-2273; see also Tr., R. 216, PageID# 2865 (Bixler initially treated one woman "like gold, like [she] was a queen.")). When Kaitlyn M. first met Bixler, for example, he suggested that she prostitute to make money. (Tr., R. 214, PageID## 2264-2271). She had never used Backpage before, so Bixler told her how to set up an account and solicit clients and paid her Backpage fees. (Tr., R. 214, PageID## 2271-2272). At first, she kept her earnings while Bixler provided housing, food, and drugs free of

charge. (Tr., R. 214, PageID## 2271-2275). But then Bixler told her that she owed him. (Tr., R. 214, PageID## 2274-2276). Eventually he took all of her money to pay back her supposed debts, and as she “started to do more dope, [she] would need more dope to not be sick, and that [started to] cost money, too.” (Tr., R. 214, PageID## 2275, 2281-2282). Working via Backpage stopped being a choice; it became something she had to do out of fear of withdrawal and of Bixler taking everything away from her. (Tr., R. 214, PageID## 2275-2276, 2287, 2364-2365. See also Tr., R. 214, PageID## 2387, 2436-2437 (Savanah G. and Savanah E. likewise explaining their dependence on Bixler)).

b. Bixler Controlled All Aspects Of His Victims’ Commercial Sex Acts

After gaining control over his victims, Bixler used them to advance his sex trafficking scheme. Bixler also deputized certain people to help run his operation, including his girlfriend Crystal R. and victim Savanah G. (See, e.g., Tr., R. 214, PageID## 2394-2395; Tr., R. 217, PageID## 3317-3322).

Whether directly or through a deputy, Bixler controlled every aspect of the victims’ commercial sex acts. Bixler paid their Backpage fees so they could advertise sex, using pictures he and Crystal R. took of them after telling them how to pose provocatively. Bixler told them what to write in the advertisements and how to select prospective clients. Sometimes, he posted the advertisements; other times, Crystal R. or someone else did so for him. At his direction, Crystal R.

accepted calls from interested men and scheduled the women's meetings with them. Bixler decided how much they would charge for their work. He paid for the hotel rooms his victims used and provided transportation when they met men elsewhere. (Tr., R. 214, PageID## 2271-2273, 2281-2285, 2389, 2434-2436, 2457-2458, 2476; Tr., R. 215, PageID## 2552-2566, 2584-2586, 2686-2688, 2792-2798; Tr., R. 220, PageID## 3637-3639).

Bixler also imposed a strict set of rules. His victims were not allowed to leave their hotel rooms without permission or to have Black men as clients. They were not allowed to have sex for money without his approval, they had to tell him exactly how much money they made, and they had to give him all of their proceeds. He controlled what they could say to people, what they could do, and where they could go. (Tr., R. 214, PageID## 2275-2277, 2279, 2281, 2284, 2306-2308, 2365, 2389-2391, 2394-2395, 2410, 2436-2439).

c. Bixler Used Force And Coercion To Keep His Victims Working For Him

Bixler coerced his victims into committing commercial sex acts by controlling their drug supply. He increased the quantity of drugs they consumed and only gave them drugs after they complied with his demands. He manipulated their addictions so aggressively that Kaitlyn M. would "sell [her] soul to feel better" and often had to beg Bixler to bring her drugs. (Tr., R. 214, PageID##

2265, 2275-2276, 2282, 2290-2291, 2309-2310, 2363-2370, 2381-2387, 2436-2437, 2450-2451, 2472).

Bixler also controlled his victims with violence. He beat them often and with impunity, and did so with multiple women present so everyone knew what could happen to them if they disobeyed him. He punished them if they tried to leave—for example, by chasing and punching Savannah G. when she tried to run away. He slapped, punched, choked, and kicked his victims, once beating Savannah E. until she was “spraying blood” because she left her hotel room without permission. He violently threw his victims into furniture and threw furniture and other objects at them, including slamming Savannah G. into a glass coffee table and throwing a couch at Savannah E. (Tr., R. 214, PageID## 2278-2282, 2290, 2292-2295, 2390-2392, 2440-2446, 2449-2450; Tr., R. 215, PageID## 2730-2731, 2747; Tr., R. 216, PageID## 2831-2833; Tr., R. 217, PageID## 3306-3311, 3316-3317).

Bixler employed other coercive tactics, too. He regularly carried a gun, which he used to threaten Savannah E. when she twice ran away, and he hurled derogatory terms at the women, such as “whore,” “[b]itch,” “slut,” and “[j]unkie.” (See, *e.g.*, Tr., R. 214, PageID## 2280-2283, 2451-2454; Tr., R. 215, PageID## 2686, 2731-2734, 2752-2753). Crystal R. once saw Bixler yelling aggressively at Savannah G. and Savannah E., telling them “[t]o get their fucking asses into the [hotel] room” because “they had jobs to do.” (Tr., R. 217, PageID## 3306-3308).

Ultimately, local law enforcement arrested Bixler after he sold drugs to an informant; he was later charged with several sex trafficking, drug trafficking, witness tampering, and firearm offenses. (Tr., R. 215, PageID## 2759-2773; Second Superseding Indictment, R. 32, PageID## 181-189).

SUMMARY OF ARGUMENT

This Court should affirm Bixler's convictions and sentence.

1. The district court acted within its discretion by denying Bixler's motion for a continuance. The court's refusal to reschedule the trial—which involved more than 40 witnesses—minutes before *voir dire* was reasonable. Further, the court took steps to prevent any prejudice to Bixler from the mere existence of a local anti-trafficking rally.

2. The district court did not clearly err in rejecting Bixler's *Batson* challenge. The district court was entitled to credit the government's non-racial explanation for striking the juror in question.

3. The district court did not abuse its discretion in admitting testimony by an addiction expert. The expert provided helpful context for the jury but did not opine on the ultimate issue of whether Bixler used fraud or coercion to cause his victims to engage in commercial sex.

4. The district court did not abuse its discretion by excluding evidence of the victims' other prostitution. Bixler's argument that the court violated his Sixth

Amendment confrontation right ignores all of the evidence the jury heard about the victims' biases and motivations to lie. Further, Bixler cannot establish a Fifth Amendment due process violation based on the exclusion of evidence this Court has deemed irrelevant as a matter of law. Finally, any constitutional error was harmless beyond a reasonable doubt because Bixler elicited much of the evidence of his victims' other prostitution and argued to the jury that his victims voluntarily prostituted themselves. That the jury credited the women, not Bixler, does not warrant reversal.

5. Sufficient evidence supported Bixler's sex trafficking and witness tampering convictions, the only counts he actually challenges on appeal. Bixler's arguments to the contrary improperly ask this Court to reweigh the evidence and to reevaluate the witnesses' credibility.

6. There was no sentencing error. The district court applied enhancements supported by the record and did not impermissibly double-count any of Bixler's conduct. Further, the court calculated the restitution amount based upon a thorough and conservative view of the record.

ARGUMENT

I

THE DISTRICT COURT ACTED WITHIN ITS DISCRETION WHEN IT DECLINED TO POSTPONE TRIAL

A. *Standard Of Review*

The denial of a motion for a continuance is reviewed for an abuse of discretion. *United States v. Hall*, 200 F.3d 962, 964 (6th Cir. 2000). “To demonstrate reversible error, the defendant must show that the denial resulted in actual prejudice to his defense.” *United States v. King*, 127 F.3d 483, 487 (6th Cir. 1997) (citation omitted).

B. *Bixler’s Motion To Continue*

On day one of trial, minutes before the start of *voir dire*, Bixler orally moved to continue his trial for an unspecified period of time based on news coverage of a local rally occurring that day related to “either human trafficking or sex trafficking.” (Tr., R. 213, PageID# 1904). Bixler argued that the rally deprived him of a fair trial because the jurors “may have heard reports” about the rally that morning and might see or hear news coverage about the rally during trial. (Tr., R. 213, PageID# 1904). The government responded that the district court’s instructions and admonishments to the jurors would ensure a fair trial. (Tr., R. 213, PageID## 1904-1905).

The court denied Bixler's motion, assuring the parties that it would "carefully voir dire the jury" on any "knowledge or any disposition" they had about human trafficking. (Tr., R. 213, PageID# 1905). The court added that it would "repeatedly warn[] [the jury] not to do any research or look at anything concerning this topic," and "to avoid any news concerning th[e] case and * * * the subject matter of the case." (Tr., R. 213, PageID# 1905).

During *voir dire*, the court (and counsel) asked the prospective jurors about their knowledge and opinions of human trafficking. (Tr., R. 213, PageID## 1983-1985, 2003-2004, 2109-2113, 2121, 2129-2132). One prospective juror stated that she had worked on a human trafficking task force; she was excused. (Tr., R. 213, PageID## 2112-2113, 2121, 2171-2172). Bixler's counsel specifically asked if anyone had "seen any news stories or read anything about commercial sex trafficking which [they] believe might impact the way [they] look at the evidence in this case," and if anyone had "seen anything on TV recently, watched any stories, [or] heard any news accounts" about commercial sex trafficking. (Tr., R. 213, PageID## 2003-2004). No one answered yes. (Tr., R. 213, PageID# 2004).

C. The District Court Acted Within Its Discretion In Denying Bixler's Motion

"[D]istrict courts require a great deal of latitude in scheduling trials and, therefore, must be given broad discretion to determine whether to grant continuances." *United States v. Walden*, 625 F.3d 961, 964 (6th Cir. 2010) (citing

Morris v. Slappy, 461 U.S. 1, 11-12 (1983)). When reviewing such a decision, this Court considers “the circumstances present in [the] case, particularly in the reasons presented to the trial [court] at the time [of] the request,” and “look[s] for a showing from the defendant of prejudice.” *United States v. Frost*, 914 F.2d 756, 765 (6th Cir. 1990) (citation omitted).

The court’s denial of Bixler’s motion was appropriate under the circumstances and did not prejudice Bixler. It was entirely reasonable for the court to refuse to continue the trial based on speculative concerns raised minutes before trial was scheduled to start, especially in light of the inconvenience in rescheduling a complex, six-victim, 16-count, 40-plus-witness trial. And the court took steps to prevent any prejudice to Bixler. Through *voir dire*, the parties were able to eliminate the only prospective juror with any knowledge of human trafficking. (Tr., R. 213, PageID## 2112-2113, 2171-2172). The court also repeatedly instructed the jury throughout trial to avoid watching, reading, or listening to anything related to the trial’s subject matter. (See, *e.g.*, Tr., R. 213, PageID# 2222; Tr., R. 218, PageID# 3466). By taking these steps, the court acted within its discretion and ensured that Bixler had a fair trial.

Bixler points (Br. 27-28) to this Court’s opinion in *United States v. Garner*, 507 F.3d 399 (6th Cir. 2007), but *Garner* does not help him. There, this Court found an abuse of discretion where the trial court denied a continuance even

though the government did not disclose to defense counsel critical and potentially exculpatory evidence until the morning of trial. *Id.* at 404. The facts in *Garner* are nothing like those here. Because Bixler has failed to show that the district court’s decision was arbitrary and prejudicial, this Court should reject his challenge.

II

THE DISTRICT COURT DID NOT ERR BY ALLOWING THE UNITED STATES TO STRIKE A JUROR WHOSE FAMILY AND FRIENDS KNEW BIXLER

A. Standard Of Review

This Court reviews the district court’s denial of a *Batson* challenge for clear error, affording the court’s ruling “great deference.” *United States v. Copeland*, 321 F.3d 582, 599 (6th Cir. 2003) (citation omitted). Such “[d]eference is necessary because a reviewing court, which analyzes only the transcripts from *voir dire*, is not as well positioned as the trial court is to make credibility determinations.” *Miller-El v. Cockrell*, 537 U.S. 322, 339 (2003).

B. Background

1. One Juror Indicates Prior Knowledge Of Bixler

During *voir dire*, the court asked each prospective juror if they had “heard the name Prince Bixler before.” (Tr., R. 213, PageID# 1934). Only one juror—Juror 23—answered yes. (Tr., R. 213, PageID## 1934-1936).

Juror 23 initially informed the court that she knew Bixler's name "[t]hrough mutual family." (Tr., R. 213, PageID# 1935). She then stated that while she was not related to Bixler, one of her family members mentioned his name three or four years earlier. (Tr., R. 213, PageID# 1935). Despite the remoteness and singular nature of that occasion, Juror 23 was confident that the "Prince Bixler" her family mentioned was defendant Bixler. (Tr., R. 213, PageID## 1935-1936). When Juror 23 later approached the bench to speak with the court and counsel privately, she stated that she and Bixler had a mutual friend—and not mutual family—and that when she was visiting a relative, that mutual friend mentioned Bixler. (Tr., R. 213, PageID## 2014-2016).

Despite her knowledge of Bixler, Juror 23 stated that she "absolutely" could be fair and impartial. (Tr., R. 213, PageID## 2014-2015).

2. Bixler Challenges The Government's Peremptory Strike Of Juror 23

The government used a peremptory strike to remove Juror 23, who is African American, from the venire. (Tr., R. 213, PageID## 2169-2173). Bixler challenged the strike, arguing that the prosecution struck Juror 23 because of her race. (Tr., R. 213, PageID# 2173). The prosecutor insisted that the strike "had nothing to do with race" and resulted only because Juror 23 knew Bixler's name and gave conflicting information about whether they had friends or family in common. (Tr., R. 213, PageID## 2173-2174). Bixler challenged the prosecutor's

characterization of Juror 23's statements, arguing that "she did not know Mr. Bixler personally and really was not sure how she knew that name." (Tr., R. 213, PageID# 2174).

The court concluded that the government offered a sufficient race-neutral basis for the strike and that Bixler inaccurately described Juror 23's testimony. (Tr., R. 213, PageID## 2175-2176). The court found that "not only had [Juror 23] heard of Prince Bixler, there was an inconsistency on how she heard." (Tr., R. 213, PageID# 2175). The court stated that Juror 23 "recalled hearing [Bixler's name] from a specific person, so she did have knowledge of the defendant and nobody else in the entire pool had that." (Tr., R. 213, PageID# 2175).

The court then asked if Bixler had "any other evidence or pretext"—to which he answered no—and overruled Bixler's challenge. (Tr., R. 213, PageID# 2176).

C. The District Court Did Not Clearly Err In Rejecting Bixler's Batson Challenge

The Constitution prohibits any party from using peremptory strikes based upon a prospective juror's race. See *Batson v. Kentucky*, 476 U.S. 79, 88 (1986); *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 617 (1991). When a party alleges a *Batson* violation, courts employ a three-step process to evaluate the claim, under which the ultimate burden of persuasion remains with the party challenging the strike. *United States v. Cleveland*, 907 F.3d 423, 433 (6th Cir.

2018), cert. denied, 139 S. Ct. 1578 (2019). First, the claimant must “make a prima facie showing that the [strike] was based on race.” *Ibid.* Second, “the party making the strike must articulate a race-neutral explanation for removing the juror in question.” *Ibid.* Third, the claimant “must prove purposeful discrimination,” which may be done by “demonstrating that the proffered explanation is merely a pretext for racial motivation.” *Ibid.* Because the first step becomes moot “once a party offers a race-neutral explanation for a peremptory challenge and the trial court has ruled on the ultimate question of intentional discrimination,” this Court need only consider the second and third steps. *United States v. Jackson*, 347 F.3d 598, 604 (6th Cir. 2003).

Here, the court did not clearly err by finding that the government satisfied its burden. After Bixler lodged his objection, the government proffered a race-neutral basis for striking Juror 23: namely, that her friends or family knew Bixler. (Tr., R. 213, PageID## 2173-2174). This Court has recognized that a familial connection to the defendant “is facially reasonable and does not suggest discriminatory intent.” *United States v. Lawrence*, 735 F.3d 385, 443 (6th Cir. 2013).

Nor did the district court clearly err by finding this explanation was not pretextual. Bixler argued pretext by noting that Juror 23 “did not know Mr. Bixler personally and really was not sure how she knew [his] name.” (Tr., R. 213, PageID# 2174). But the court reasonably credited the prosecutor’s explanation

based upon its in-person assessment of the prosecutor and Juror 23. (Tr., R. 213, PageID## 2175-2176; see also *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008) (detailing the importance of a “trial court’s firsthand observations”)). The court accurately summarized Juror 23’s statements, noted that her explanation changed during the course of *voir dire*, recognized that she was the only prospective juror who knew of Bixler, and fairly acknowledged that Juror 23 felt she could be fair and impartial. (Tr., R. 213, PageID## 2175-2176). This assessment was plausible and cannot be said to be clearly erroneous.

Bixler repeats (Br. 25-26) the credibility attack he made below and impermissibly asks this Court to substitute its judgment for that of the district court on a “pure issue of fact.” *United States v. Atkins*, 843 F.3d 625, 632 (6th Cir. 2016) (citation omitted). Bixler first argues (Br. 25) that Juror 23 heard Bixler’s name “in passing” and indicated that she could be neutral. But arguments that merely offer another possible interpretation of Juror 23’s statements do not show clear error warranting reversal. As this Court has stated, “the factfinder’s choice between [two permissible views of the evidence] cannot be clearly erroneous.” *Atkins*, 843 F.3d at 632 (citation omitted).

Second, Bixler mischaracterizes Juror 23’s statements. While Bixler argues (Br. 25) that Juror 23 “might have heard” Bixler’s name before, Juror 23 unequivocally informed the court that she had heard Bixler’s name and that

defendant Bixler was the same person whose name she had heard. (Tr., R. 213, PageID## 1919, 1935-1936). Such a misstatement of the record is not a plausible view of the evidence and provides no basis to disturb the district court's finding allowing the peremptory strike.

III

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING EXPERT TESTIMONY ABOUT THE MEDICAL NATURE OF DRUG ADDICTION AND WITHDRAWAL

A. Standard Of Review

“This Court reviews for an abuse of discretion whether the district court properly admitted or excluded expert testimony under Federal Rule of Evidence 702.” *United States v. Amawi*, 695 F.3d 457, 478 (6th Cir. 2012).

B. Background

1. Bixler's Pre-Trial Challenge To Dr. Clark's Testimony

Before trial, Bixler moved to preclude the government from introducing the testimony of addiction expert Dr. Kelly Clark. (Motion, R. 87, PageID## 476-477; Memorandum, R. 87-1, PageID## 478-482). Bixler did not challenge Dr. Clark's expertise; instead, he argued that her testimony would not be helpful and would “invade the province of the jury,” which was “as capable as Dr. Clark” of determining whether he coerced his victims. (Memorandum, R. 87-1, PageID# 481). The government responded that Dr. Clark would not opine about whether

Bixler coerced his victims. (Opposition, R. 103, PageID## 532-540). Rather, she would explain the “science underpinning withdrawal and addiction,” and the impact of certain drugs on a person’s mind and body. (Opposition, R. 103, PageID## 535-538).

The district court denied Bixler’s motion for two reasons. First, the court accepted the government’s proffer that Dr. Clark would not testify about whether Bixler coerced his victims. Instead, her testimony would supply “the ingredients needed to allow the jury to come to the legal conclusion presented.” (Order, R. 123, PageID# 697). Second, the court concluded that Dr. Clark’s testimony would aid the jury because a “jury would not, itself, appreciate the medical and psychological nuances of addiction[.]” (Order, R. 123, PageID## 696-699).

2. Dr. Clark’s Trial Testimony

At trial, Dr. Clark explained the differences between drug dependence and drug addiction. (Tr., R. 216, PageID## 2940-2946). She described dependence as the body’s adjustment to having a drug in its system, and explained that withdrawal symptoms result as the body readjusts to the drug’s absence. (Tr., R. 216, PageID## 2941-2943). In comparison, addiction is a “chronic brain disease” that affects “impulse control, things like learning and memory, [and] judgment[.],” and often requires medical intervention to treat. (Tr., R. 216, PageID## 2943, 2947, 2953-2954, 2957-2958). While anyone can become dependent upon drugs

and suffer some withdrawal symptoms when the drugs wear off, only those who suffer from addiction lose control when the drugs are withheld. (Tr., R. 216, PageID## 2943-2946). Dr. Clark further testified that people who struggle with addiction initially reuse drugs to “chas[e]” the good feeling that comes from them but, as the addiction cycle continues, they reuse drugs to escape the sickness that comes from withdrawal. (Tr., R. 216, PageID## 2949-2950). She further explained what it feels like to withdraw from drugs such as heroin, cocaine, and methamphetamine, and stated that “people can’t function when their bodies” are going through withdrawals. (Tr., R. 216, PageID## 2941-2943, 2957-2961).

C. The District Court Did Not Abuse Its Discretion By Allowing Testimony That Would Help The Jury

Federal Rule of Evidence 702 permits a person qualified as an expert to give opinion testimony if, among other things, it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” *United States v. Johnson*, 488 F.3d 690, 698 (6th Cir. 2007) (quoting Fed. R. Evid. 702). Here, the district court did not abuse its discretion in determining that Dr. Clark’s testimony could assist the trier of fact to understand the evidence or determine a fact in issue.²

² Reciting the factors set forth in Rule 702, Bixler states (Br. 23) that the district court “failed to appropriately consider (1) whether Dr. Clark’s testimony would help the trier of fact to understand evidence or determine a fact in issue, (2) whether the testimony was based on sufficient facts or data, (3) whether the testimony was the product of reliable principles and methods, and (4) whether the
(continued...) ”

Dr. Clark's testimony about the severe physical and psychological effects of addiction provided important context to help the jury understand the victims' testimony and Bixler's ability to manipulate their vulnerabilities. The victims were all struggling with addiction and reliant upon Bixler to get drugs. (Tr., R. 214, PageID## 2282, 2309-2310, 2370, 2387). The jury saw and heard evidence that the victims often begged Bixler to bring them drugs and agreed to sell their bodies to escape the pain of withdrawal. (See, *e.g.*, Tr., R. 214, PageID## 2291, 2364-2365). Dr. Clark explained, in general terms, that addiction interferes with brain function and causes people to lose control, leaving them focused on avoiding withdrawal symptoms above all else. (Tr., R. 216, PageID## 2943, 2947, 2953-2954, 2957-2960). This testimony helped the jury to understand why women who were addicted to drugs could feel as if they had no choice but to comply with someone who exacerbated their addictions and conditioned their receipt of drugs

(...continued)

principles and methods have been reliably applied to the facts of the case.” Although Bixler declares that Dr. Clark's testimony did not satisfy “any of the foregoing factors,” his argument ignores all but the first factor. Br. 23.

Bixler has waived his right to review of any factor but the testimony's helpfulness to the jury. See *United States v. Layne*, 192 F.3d 556, 566-567 (6th Cir. 1999) (deeming issues adverted to in a perfunctory manner waived). Even if Bixler had sufficiently argued the other factors, the record is clear that the district court did not abuse its discretion in finding Dr. Clark's testimony reliable. (See Opposition, R. 103, PageID## 532-540; Order, R. 123, PageID## 693-699).

on performing commercial sex acts. Other courts have found that such testimony aids the jury in sex-trafficking cases, and the district court did not abuse its discretion in so finding here. See, e.g., *United States v. Blake*, 868 F.3d 960, 968 (11th Cir. 2017).

Bixler claims (Br. 23) that Dr. Clark testified about whether he coerced his victims, but Dr. Clark offered no such testimony. She did not mention Bixler or the women he victimized. Instead, she testified about the factual underpinnings of drug addiction and withdrawal, a context that enabled the jury to ultimately conclude that Bixler used coercion to cause Savannah G., Savannah E., and Kaitlyn M. to commit commercial sex acts. (Tr., R. 216, PageID## 2929-2962; see also *United States v. Volkman*, 797 F.3d 377, 388 (6th Cir. 2015)). There was no abuse of discretion in permitting such testimony.

IV

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY LIMITING EVIDENCE OF THE VICTIMS' OTHER PROSTITUTION

A. Standard Of Review

This Court reviews “the district court’s decision to admit or exclude evidence [pursuant to Federal Rule of Evidence 412] for an abuse of discretion.” *United States v. Mack*, 808 F.3d 1074, 1084 (6th Cir. 2015). A reviewing court must decide whether, despite a limitation on cross-examination, “the jury was otherwise in possession of sufficient information * * * [about] a witness’ [sic]

motives and bias.” *United States v. Kone*, 307 F.3d 430, 436 (6th Cir. 2002) (citation omitted).

Where the defendant alleges that an evidentiary ruling violated the Constitution, this Court reviews the alleged error *de novo*. *United States v. Blackwell*, 459 F.3d 739, 752 (6th Cir. 2006). A court’s error does not warrant reversal when this Court “may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt.” *Delaware v. Van Arsdall*, 475 U.S. 673, 681, 684 (1986); see also *Miller v. Genovese*, 994 F.3d 734, 744 (6th Cir. 2021).

B. Background

Before trial, the government filed a motion invoking Rule 412, which governs the admission of evidence of a victim’s sexual behavior, to preclude evidence that Bixler’s victims engaged in prostitution before or after he trafficked them. (Motion in Limine, R. 72, PageID## 412-419). Bixler argued that the Constitution, and Rule 412(b)(1)(C), required the admission of such evidence. (Opposition, R. 77, PageID## 435-439). He claimed that the Sixth Amendment gave him the right to use this evidence to show his victims’ bias and motivation to lie, and that the Fifth Amendment gave him the due process right to argue that because his victims had prostituted voluntarily at other times, they also did so here,

thereby providing him with a complete defense to the trafficking charges.

(Opposition, R. 77, PageID## 436-438).

The court rejected Bixler's arguments and granted the government's motion. (Order, R. 98, PageID## 513-517).

C. The District Court Did Not Violate Bixler's Constitutional Rights By Imposing Reasonable Limitations On Cross-Examination

The district court acted within its discretion when it permitted Bixler to cross-examine the victims about their prior criminal conduct while prohibiting him from delving into whether that conduct involved prostitution. See *United States v. Givhan*, 740 F. App'x 458, 460-464 (6th Cir. 2018). Absent certain exceptions, Rule 412 prohibits "evidence offered to prove that a victim engaged in other sexual behavior." Fed. R. Evid. 412(a)(1). And courts, including this one, have consistently held that a victim's prostitution on other occasions is irrelevant to the determination of whether a defendant used force or coercion to cause the victim to engage in commercial sex acts. See *Mack*, 808 F.3d at 1084; *Givhan*, 740 F. App'x at 463-464; *United States v. Carson*, 870 F.3d 584, 594-596 (7th Cir. 2017) (collecting cases).

Bixler tries to get around this well-established rule by claiming that the evidence he sought to introduce falls within the exception in Rule 412(b)(1)(C), which permits "evidence whose exclusion would violate the defendant's constitutional rights." But there was no constitutional error here. The court's

ruling did not stop Bixler from confronting his victims with their biases and motivations to lie under the Sixth Amendment, nor did it arbitrarily eliminate a critical component of his defense in violation of the Fifth Amendment.

1. There Was No Sixth Amendment Violation

The Sixth Amendment guarantees defendants “an opportunity for effective cross-examination.” *Lewis v. Wilkinson*, 307 F.3d 413, 419 (6th Cir. 2002) (emphasis and citation omitted). It does not guarantee “cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *Ibid.* (citation omitted); *Van Arsdall*, 475 U.S. at 679. Even where a defendant is seeking to impeach a witness with evidence that she is biased or has a motivation to lie—an area critical to a defendant’s confrontation rights, *Boggs v. Collins*, 226 F.3d 728, 736-737 (6th Cir. 2000)—the Sixth Amendment requires only that the defendant be able to provide the jury with “sufficient information concerning formative events to make a discriminating appraisal of the witness’ [sic] motives and bias.” *United States v. Fields*, 763 F.3d 443, 464 (6th Cir. 2014) (citation omitted).

The record here shows that the jury received more than enough evidence to evaluate each victim’s possible bias and motive to lie. Some of that evidence even included details of the victims’ other prostitution.

Kaitlyn M. testified that throughout the government's investigation she had multiple outstanding warrants, avoided arrest on at least one of the warrants, and that a police officer investigating Bixler helped her avoid arrest on another warrant that was later issued for her arrest. (Tr., R. 214, PageID## 2329-2330). She further testified that she had purchased drugs throughout her time with Bixler. (Tr., R. 214, PageID## 2330-2335, 2346). Bixler's counsel also elicited testimony that Kaitlyn M. told Bixler that she was going to "kill [him]," would "strangle" him if he did not stay with her, and would be upset if he did not visit her. (Tr., R. 214, PageID## 2351-2352, 2355). Finally, Bixler testified that, contrary to Kaitlyn M.'s testimony, she had in fact worked on Backpage before he met her, and that they met when he responded to an advertisement to have sex with her. (Tr., R. 217, PageID## 3187-3188).

The jury also heard significant evidence of Savannah E.'s potential biases and motivations to lie. She testified that she worked as a prostitute independent of Bixler at unspecified times, used drugs before she met Bixler, bought drugs throughout her time with him, and used drugs several hours before testifying at trial. (Tr., R. 214, PageID## 2433-2434, 2455, 2463, 2466-2468).

Finally, Bixler presented similar evidence of Savannah G.'s possible biases and motivations to lie. Savannah G. admitted that she had worked through Backpage before meeting Bixler, and Bixler elicited additional testimony that she

later used Backpage independent of him. (Tr., R. 214, PageID## 2397-2398, 2413, 2421-2423). Bixler impeached her with a transcribed conversation indicating that officers paid her to talk to them; confronted her with her alleged statement that talking to officers about Bixler would help her with pending charges; and confirmed that a detective investigating Bixler agreed to help her retrieve her dog from the pound. (Tr., R. 214, PageID## 2408, 2411-2413). Bixler also elicited testimony about her criminal history, including prior drug purchases and her “many times” in jail, and implied that a felony robbery charge was reduced to misdemeanor shoplifting because she spoke with a detective investigating Bixler. (Tr., R. 214, PageID## 2406, 2410-2411, 2413). Savanah G. testified that she disliked that Bixler had relationships with other women and was married while seeing her. (Tr., R. 214, PageID# 2415). And she acknowledged that she continued to struggle with addiction to illegal drugs and is a convicted felon. (Tr., R. 214, PageID## 2424-2425).

Because the jury heard extensive testimony about the victims’ potential for bias and motivation to lie, the district court’s ruling does not implicate the Sixth Amendment. See *Givhan*, 740 F. App’x at 462. As the Seventh Circuit explained, “once a trial court permits a defendant to expose a witness’s motivation, it is of peripheral concern to the Sixth Amendment how much opportunity defense counsel gets to hammer that point home to the jury.” *United States v. Recendiz*,

557 F.3d 511, 530 (2009) (citation and internal quotation marks omitted; see also *Carson*, 870 F.3d at 597 (stating “the defendant has no constitutional right to pile on”).

Bixler offers (Br. 17) no argument that the jury had insufficient information to understand the victims’ biases and motivations to lie. Nor does Bixler explain what more he sought to achieve through cross-examination, especially in light of his actual ability to elicit evidence of the victims’ other prostitution despite the court’s order. There was no Sixth Amendment violation under these circumstances and, even if there were, it would be harmless beyond a reasonable doubt on this record.

2. *There Was No Fifth Amendment Violation*

The court’s evidentiary ruling also did not affect Bixler’s Fifth Amendment due process right to a complete defense. The Constitution entitles a defendant to a “meaningful opportunity” to present a defense; it does not afford “an unlimited right to ride roughshod over reasonable evidentiary restrictions.” *Wynne v. Renico*, 606 F.3d 867, 870 (6th Cir. 2010) (citations omitted); see also *United States v. Scheffer*, 523 U.S. 303, 308 (1998). A court violates due process only if it excludes evidence that is “central” to the defendant’s “claim of innocence,” without a “valid state justification.” *United States v. Ogden*, 685 F.3d 600, 605 (6th Cir. 2012) (citation omitted).

There was no violation here. Bixler argues (Br. 18) that evidence of the victims' other voluntary prostitution "tended to demonstrate that [they] participated in commercial sex acts on their own volition." But the evidence was not actually probative of Bixler's proposed defense. The question before the jury was whether Bixler forced or coerced his victims to engage in some commercial sex acts, not whether they had *otherwise* worked as prostitutes. As this Court explained in *Boggs*, a victim's past acts are not probative of whether a defendant is criminally liable for the charged conduct and, accordingly, cannot be relied on to show the victim acted in conformity with those acts on other occasions. 226 F.3d at 744. Other "bedrock" evidentiary rules also bar this evidence because it is unduly prejudicial and would confuse the jury by suggesting that the victims had the propensity to engage in prostitution. *Ibid.*; see Fed. R. Evid. 403, 404(a)(1) and (b)(1). Nor was the evidence excluded without a valid state justification. This Court has held that Rule 412 "[validly] encourages victims of sexual abuse to report their abusers by protecting the victims' privacy." *Ogden*, 685 F.3d at 606.

Bixler argues (Br. 18) that the district court incorrectly relied on *Mack* and *Givhan* to exclude the challenged evidence because those cases are inapt. But even if the court had misinterpreted the scope of Bixler's argument by relying on *Mack*'s discussion of consent for purposes of Rule 412, that was not the sole basis for the court's ruling. The court also considered the standard for a "complete

defense” due process claim and found that Bixler failed to satisfy that standard. (Order, R. 98, PageID## 516-517). And Bixler inexplicably takes issue with the district court’s reliance on *Givhan*. Br. 18. In that case, this Court held that the trial court’s exclusion of evidence under Rule 412 did not violate the defendant’s right to present a defense because the defendant, like Bixler, failed to argue that there was no legitimate basis to exclude the evidence. 740 F. App’x at 464-465.

Finally, for the same reason any Sixth Amendment error was harmless, so too here. See *Van Arsdall*, 475 U.S. at 684. The jury heard testimony about the victims’ work as prostitutes independent of Bixler. (Tr., R. 214, PageID## 2397-2398, 2423-2424; Tr., R. 217, PageID## 3187-3188). Bixler argued to the jury precisely what he claims the district court precluded: that the victims could not be trusted because they were trying to escape criminal liability, and that they willingly prostituted themselves, just as they did before and after encountering him. (Tr., R. 218, PageID## 3443-3449; Br. 32).

V

THE JURY HAD SUFFICIENT EVIDENCE TO CONVICT BIXLER OF SEX TRAFFICKING AND WITNESS TAMPERING

A. Standard Of Review

This Court reviews *de novo* “a district court’s denial of a motion for judgment of acquittal based on the sufficiency of the evidence.” *United States v. Callahan*, 801 F.3d 606, 616 (6th Cir. 2015). The Court must “determine whether,

after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Ibid.* (citations and internal quotation marks omitted). The Court does not “reweigh the evidence, reevaluate the credibility of witnesses, or substitute [its] judgment for that of the jury,” and a defendant claiming insufficient evidence thus bears “a very heavy burden.” *Ibid.* (citations omitted).

B. Sufficient Evidence Supported The Sex Trafficking Convictions

The government presented sufficient evidence for the jury to convict Bixler of sex trafficking Savannah G., Savannah E., and Kaitlyn M. by force, fraud, or coercion. To prove that Bixler violated Section 1591, the government had to show beyond a reasonable doubt that Bixler (1) knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained his victim, (2) knowing or recklessly disregarding the fact that force and coercion would be used to cause her to engage in a commercial sex act (3) and that the offense was in or affected interstate commerce.

Bixler challenges only the second element: whether he caused his victims to engage in commercial sex acts by force or coercion. Br. 32-34. But the record easily permitted the jury to find that the evidence satisfied that element beyond a reasonable doubt as to each victim. As this Court has already held, evidence that a defendant beat and yelled at victims and manipulated their access to drugs to cause

them to prostitute suffices for a conviction under Section 1591. *United States v. Mack*, 808 F.3d 1074, 1079-1083 (6th Cir. 2015). Bixler's arguments to the contrary impermissibly demand that this Court reweigh the evidence and reevaluate the witnesses' credibility.³

1. Count 1 – Savannah G.

The evidence of force and coercion enabled the jury to find Bixler guilty of Count 1. Bixler met Savannah G. when she was drunk, stranded in a parking lot, and homeless. (Tr., R. 214, PageID# 2383; Tr., R. 217, PageID# 3159). He immediately gave her crack cocaine and a place to stay, and started a relationship with her. (Tr., R. 214, PageID## 2382-2383). Bixler "was great to [her] at first," giving her drugs "[e]very day when [she] needed [them]." (Tr., R. 214, PageID## 2383, 2385). But that quickly changed. (Tr., R. 214, PageID## 2385-2388). Bixler started beating Savannah G. at least once a week, leaving her face "black-and-blue" on one occasion and her neck covered in "strangle marks" on another. (Tr., R. 214, PageID## 2387-2397; Tr., R. 217, PageID## 3308-3311). Savannah

³ We address only the sufficiency of the evidence to support Bixler's sex trafficking and witness tampering convictions. Bixler waived any sufficiency challenge to his other convictions by failing to present any argument on those counts. See Br. 14, 21-27; *United States v. Layne*, 192 F.3d 556, 566-567 (6th Cir. 1999) (deeming challenges "adverted to in a perfunctory manner" waived). If this Court nevertheless chooses to review Bixler's other convictions, sufficient evidence also existed to support the jury's verdict on those counts. (Tr., R. 217, PageID## 3066-3108).

G. grew to fear Bixler, especially when she disagreed with him. (Tr., R. 214, PageID## 2387-2397).

Savanah G. was scared of Bixler and dependent on him for drugs when she started working for him through Backpage. And, once she was working as a prostitute, Bixler's violence and manipulation continued. He beat her when she broke his rules and when she refused to help him prostitute other victims. And, he controlled every aspect of her commercial sex acts: he reviewed each advertisement before it was posted and took all of her earnings. Bixler told her to collect money, "work the phone," and pay for hotel rooms for the other women he prostituted. Savanah G. knew that if she refused Bixler, he would "get mad[,] [go] off," and there would be "a fight." (Tr., R. 214, PageID## 2387-2396).

This evidence reasonably permitted the jury to conclude that Bixler used force or coercion to cause Savanah G. to engage in commercial sex acts. Bixler ignores this evidence and instead challenges (Br. 32) Savanah G.'s credibility. But the jury considered these credibility challenges and rejected them. (Tr., R. 218, PageID## 3442-3445). This Court may not "reevaluate the credibility of witnesses," *United States v. Eaton*, 784 F.3d 298, 304 (6th Cir. 2015), and should reject Bixler's arguments on the basis of the trial evidence.⁴

⁴ Bixler also challenges the objectivity and investigative practices of a Kentucky detective who neither party called as a witness. Br. 30-31. The district

2. *Count 2 – Savannah E.*

The evidence similarly supported Bixler's conviction on Count 2 for trafficking Savannah E. by force or coercion. Bixler encountered Savannah E. while she was homeless, addicted to heroin, and sleeping on the side of the road. (Tr., R. 214, PageID# 2431; Tr., R. 217, PageID## 3175-3176). He initially put her in a hotel room with Savannah G., and then moved her into his wife's house. (Tr., R. 214, PageID# 2432). Bixler gave Savannah E. heroin every day, and she started to work as a prostitute for him to maintain her access to drugs, food, and shelter. (Tr., R. 214, PageID## 2432-2434, 2436-2437).

Bixler controlled every aspect of Savannah E.'s commercial sex acts. He paid for Backpage advertisements, took pictures of Savannah E. to post online, and drove her to various locations to have sex with men. He imposed strict rules about who she could have sex with and how she must give him all of her proceeds. And, he enforced these rules with violence. Bixler frightened Savannah E. by beating other women in her presence, and he also beat her extensively, going so far as to throw

(...continued)

court considered this challenge pretrial and determined that if either party called this detective, he would be "subject to cross-examination like any other witness." (Order, R. 98, PageID## 510-513). Bixler now seeks to color the record with credibility attacks on a detective he chose not to call. The evidence Bixler relies upon is not new, and, as a non-witness, the detective's credibility is irrelevant. See *Davis v. City of Memphis Fire Dep't*, 576 F. App'x 464, 469 (6th Cir. 2014); *United States v. McGowan*, 58 F.3d 8, 15-16 (2d Cir. 1995).

furniture at her, fracture her ribs, and beat and kick her until she was “spraying blood.” Savannah E. managed to escape Bixler twice; each time he tracked her down and threatened her with a gun to demand her return. (Tr., R. 214, PageID## 2434-2450; Tr., R. 215, PageID## 2733, 2738-2739; Tr., R. 217, PageID# 3316).

This evidence reasonably permitted the jury to conclude that Bixler used force or coercion to cause Savannah E. to engage in commercial sex acts. Bixler ignores this evidence and again seeks to have this Court to reevaluate Savannah E.’s credibility and testimony. Br. 32-33. For the reasons already explained, see pp. 32-33, *supra*, this Court may not so supplant the jury’s role.

Bixler also argues (Br. 33) that Savannah E.’s testimony was insufficient because she testified that she used heroin several hours before testifying. But as the First Circuit held in the case Bixler cites, “[t]he question of competency goes to the issue of credibility, which is for the trier of fact.” *United States v. Hyson*, 721 F.2d 856, 864 (1983). The jury heard Savannah E. admit that she had used heroin within 24 hours of testifying (Tr., R. 214, PageID# 2463), but it also witnessed her demeanor, her answers to questions, and her ability to read several text messages into the record (Tr., R. 214, PageID## 2428-2478). The jury was entitled to weigh her testimony accordingly, and this Court should not disturb the jury’s credibility determination. See *Eaton*, 784 F.3d at 305.

3. *Count 3 – Kaitlyn M.*

The evidence also enabled the jury to convict Bixler of Count 3. Kaitlyn M. was homeless when she met Bixler and he immediately took her in and gave her heroin for free. He told her that she could make money through Backpage, and he then showed her how to set up an account, paid for her advertisements, and told her what to say in the advertisements and when speaking with men. At first, Bixler allowed her to keep the money she earned and continued to give her food, shelter, and drugs free of charge. (Tr., R. 214, PageID## 2268-2275, 2284-2285).

But this did not last. Bixler eventually told Kaitlyn M. that she owed him for everything he had given her. Kaitlyn M. also had started using more drugs with Bixler, and accordingly needed more drugs to avoid withdrawal symptoms. Bixler stopped giving her drugs for free and demanded she pay for anything she needed. Bixler began to take all of her earnings and, because she could not get drugs any other way, she often had to beg Bixler for drugs when she was sick with withdrawal symptoms. By manipulating Kaitlyn M.'s homelessness and drug addiction, Bixler made it so that she had no other option but to prostitute "for fear" of losing everything he gave her. (Tr., R. 214, PageID## 2274-2276, 2363-2365). Based on this evidence, the jury reasonably could conclude that Bixler used coercion to cause Kaitlyn M. to engage in commercial sex acts.

Bixler also used force to keep Kaitlyn M. working for him. He smacked her when she broke his rules. He also frequently beat other women in front of her, causing her to fear that if she did not please him, she would “get beat up.” (Tr., R. 214, PageID## 2282, 2290-2295). This use of force also provided the jury with a reasonable basis to find Bixler guilty of causing Kaitlyn M. to engage in commercial sex acts.

Bixler’s arguments are directed only at Kaitlyn M.’s credibility and the appropriate weight of her testimony. Br. 29, 33-34. In particular, Bixler complains (Br. 33-34) that the trafficking evidence as to Kaitlyn M. was similar to that of Sydney M., whose count the court dismissed. Unlike Sydney M., however, Kaitlyn M. clearly testified both that Bixler manipulated her and that she prostituted because she feared him. (Tr., R. 214, PageID## 2273-2295). Because Bixler raises no real argument for disturbing the jury’s verdict on the sex-trafficking counts, this Court should affirm.

C. Sufficient Evidence Supported The Witness Tampering Convictions

The government also presented sufficient evidence for the jury to convict on both witness tampering counts. To prove a violation of 18 U.S.C. 1512(b)(1), the government had to prove beyond a reasonable doubt that Bixler (1) knowingly, (2) used intimidation, threatened, or corruptly persuaded another person, or attempted

to do so, (3) with intent to influence, delay, or prevent the testimony of any person in an official proceeding.

Bixler argues (Br. 29) that the government had to prove that he used “force or the threat of physical force” to sustain a conviction under Section 1512. But Bixler quotes 18 U.S.C. 1512(a)(2), which the government did not charge, instead of Section 1512(b)(1), under which Bixler was charged and convicted.⁵ (See Second Superseding Indictment, R. 32, PageID# 183; Tr., R. 218, PageID## 3488-3489).

Even if Bixler had cited the correct provision, his argument (Br. 34) that the government did not show threatening conduct would still be meritless. Bixler seeks to have this Court selectively review the record and make inferences in his favor. Because this Court does neither when reviewing sufficiency challenges, this Court should affirm Bixler’s convictions on Counts 5 and 6.

1. Count 5 – Adrienne R.

The government introduced witness testimony and numerous recorded phone calls to prove that Bixler attempted to corruptly persuade Adrienne R. with the intent to influence her grand jury testimony, and was thus guilty of Count 5.

⁵ Section 1512(a)(2) criminalizes the use of “physical force or the threat of physical force against any person * * * with intent to” affect an official proceeding. Section 1512(b)(1) criminalizes “knowingly us[ing] intimidation, threat[s], or corruptly persuad[ing] another person * * * with intent to” affect an official proceeding.

The jury heard that Bixler preyed upon Adrienne R. in the same way he did his trafficking victims: he took her in when she was homeless, manipulated her drug addiction, and beat her. (Tr., R. 220, PageID## 3634-3636, 3646-3649).

When Bixler learned that Adrienne R. had received a grand jury subpoena in connection with the government's investigation in this case, he called her multiple times and delivered messages designed to deter her from testifying or to cause her to change her story. He told her that he would find out whatever she told the government. (Call Excerpt, GX 12C, 00:35-01:10; Call Excerpt, GX 12E, 00:36-01:00; Call Excerpt, GX 12K, 00:29-00:50). He then attempted to corruptly persuade her to refuse to testify by guilting her for betraying and hurting him:

- “Oh, but you told them you’d testify against me[.] * * * Do you know how bad that fucking hurt me?” (Call Excerpt, GX 12A, 00:18-00:28).
- “You know, I have kids too.” (Call Excerpt, GX 12G, 00:52-01:33).
- “[Y]ou don’t even have a conscience, do you? * * * Everything about you just says that you don’t even give a fuck. * * * But I’m saying, it’s just so fucked up that you don’t even have a conscience man. * * * Because I keep sitting here thinking about, you know, God damn, does she even have a conscience about the shit that she just done?” (Call Excerpt, GX 12I, 00:00-00:56).
- Adrienne R.: “I’m focused on getting my life together for me and my kid.”

Bixler: “Fuck my life. Because you all have taken that away from me, I’m scared.” (Call Excerpt, GX 12K, 00:00-00:10).

Finally, Bixler told her that he would “fight with” her rather than testify against her and further threatened: “No, when I get the fuck in front of you, I’m going to cuss

your ass out, I might even slap your God damn brains out. But at the end of the day - - I wouldn't tell the motherfucker nothing.” (Call Excerpt, GX 12G, 01:43-03:26).

Throughout these calls, the jury heard Adrienne R. lie to Bixler by saying that she was not going to testify before the grand jury. (See, *e.g.*, Call Excerpt, GX 12A, 00:18-00:23). She lied because she knew Bixler would “yell at [her] and just go off until he got what he wanted out of [her].” (Tr., R. 220, PageID## 3655-3656). Based on her history with Bixler, in which he often beat her and other women, she was worried about testifying against Bixler because she “didn't know what he was capable of.” (Tr., R. 220, PageID## 3646-3650, 3656).

Based on this evidence, the jury reasonably could conclude that Bixler knowingly intimidated, threatened, or corruptly persuaded Adrienne R., or attempted to do so, with the intent to influence, delay, or prevent her grand jury testimony.

Ignoring this evidence, Bixler argues only that he “never told [Adrienne R.] not to testify before the grand jury.” Br. 34. But Bixler's intent was clear from his calls, and he need not explicitly tell Adrienne not to testify in order for the jury to find him guilty of violating Section 1512(b)(1). This Court repeatedly has affirmed convictions based upon even veiled comments encouraging someone to change their testimony, especially when there is evidence that the defendant has a

“long-standing pattern of threatening and abusive behavior.” *United States v. Carnes*, 309 F.3d 950, 956 (6th Cir. 2002); see also *United States v. Carson*, 796 F. App’x 238, 251 (6th Cir. 2019), cert. denied, 140 S. Ct. 2754 (2020); *United States v. Blackman*, 625 F. App’x 231, 241 (6th Cir. 2015). Because there is no basis to disturb the jury’s verdict, this Court should affirm.

2. *Count 6 – Amie P.*

The evidence also reasonably permitted the jury to convict Bixler of attempting to tamper with Amie P.’s testimony. Bixler’s history with Amie P. was similar to that of his other victims: he started providing her shelter and drugs for free, but he quickly turned violent. By the time Amie P. received her grand jury subpoena to testify against Bixler, she had learned to fear him. (Tr., R. 220, PageID## 3684-3689, 3693).

The day after Amie P. received her subpoena, Bixler called her to discuss it. (Tr., R. 216, PageID## 3028-3029). He told her that the prosecutor subpoenaed her to “conquer and destroy” him by “fucking [him] with all [his] loved ones [and the people he] takes care of * * * or the people that [he would] do anything for, so once they turn on [him], [he’s] sitting in jail with nothing.” (Call Excerpt, GX 13A, 00:28-01:07; Tr., R. 216, PageID## 3028-3029; see also Call Excerpt, GX 13C, 00:14-00:34).

Amie P. testified at trial that she understood from this conversation that Bixler did not want her to testify and that he was mad at her. The day before Amie P.'s scheduled grand jury appearance, Bixler called her 32 times. These calls scared her so much that she used heroin on her way to the courthouse to avoid testifying against him. She was so scared of upsetting Bixler that she decided she would rather ignore her subpoena and spend six months in jail rather than testify against him. The judge supervising grand jury proceedings rescheduled Amie P.'s testimony because of her drug use, and Amie P. returned to testify before the grand jury weeks later. (Tr., R. 220, PageID## 3704-3710, 3788-3790, 3792-3794; Jail Call Records, GX 15, App. 13).

Bixler argues this evidence was insufficient to convict because he "told Aimee [sic] P[.] to tell the truth when she testified before the grand jury." Br. 34. But the jury could evaluate Bixler's statements, the timing of his repeated calls, and their effect on Amie P. in determining whether the government showed beyond a reasonable doubt that he knowingly intimidated, threatened, or corruptly persuaded Amie P., or attempted to do so, to influence, delay, or prevent her grand jury testimony. Bixler seeks reversal because the jury disagreed with his theory of the case, not because there was insufficient evidence to support his conviction. The evidence was sufficient, and this Court should affirm.

VI

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN SENTENCING BIXLER

A. Standard Of Review

This Court reviews the procedural reasonableness of a sentence for an abuse of discretion, yet reviews the district court's factual findings and application of the Sentencing Guidelines to the facts only for clear error. *United States v. Mack*, 808 F.3d 1074, 1084-1085 (6th Cir. 2015).

B. The District Court Rejects Bixler's Objections To His PSR

1. Before sentencing, the United States Probation Office prepared a Presentence Investigation Report (PSR). The PSR referred to Sentencing Guidelines § 2G1.1, which governs offenses involving commercial sex acts, to determine Bixler's base offense level on the sex-trafficking convictions. (See, *e.g.*, PSR, R. 201, PageID# 1721). The PSR applied Section 2G1.1(c)'s cross reference to Section 2A3.1, which governs offenses involving criminal sexual abuse, because Probation determined that Bixler's offense involved conduct described in 18 U.S.C. 2241(a) or (b) and 18 U.S.C. 2242. (PSR, R. 201, PageID# 1721). Under Section 2A3.1(a)(2), Bixler's base offense level was 30. (PSR, R. 201, PageID# 1721).

The PSR then applied several enhancements that increased Bixler's adjusted offense level to 42. Relevant here, it added four levels under Section 2A3.1(b)(1)

because Bixler's offense qualified as aggravated sexual abuse; two levels under Section 3A1.1 because Bixler knew his victims were vulnerable; two levels under Section 3B1.1(c) because Bixler was an organizer, leader, manager or supervisor of a criminal activity; and two levels under Section 3C1.1 because Bixler obstructed justice by committing perjury. (PSR, R. 201, PageID## 1721-1722).

The PSR also calculated the offense levels for Bixler's other convictions. Under Section 2J1.2(a), the PSR determined the base offense level for Bixler's witness tampering convictions to be 14 and then added 8 levels under Section 2J1.2(b)(1)(B), bringing the adjusted offense level to 22, because Bixler threatened to cause Adrienne R. physical injury. (PSR, R. 201, PageID# 1726). The PSR determined that Bixler's drug-distribution base offense level was 30 under Section 2D1.1(c)(5) based on the quantity of drugs involved. (PSR, R. 201, PageID# 1727). Finally, the PSR determined the adjusted offense level for Bixler's firearms convictions to be 26, based on a base offense level of 20 under Section 2K2.1(a)(4) and, relevant here, the addition of two levels under Section 2K2.1(b)(1)(A) because Bixler possessed three to seven firearms. (PSR, R. 201, PageID# 1728).

The PSR determined that Bixler's combined adjusted offense level was 46, and his total offense level was 43, which is the highest level provided in the Guidelines. (PSR, R. 201, PageID# 1729 (citing Sentencing Guidelines Ch. 5, Pt. A, comment. (n.2))). Based on his total offense level and criminal history category

of 5, the PSR recommended a Guidelines sentence of life imprisonment. (PSR, R. 201, PageID# 1737). The PSR also determined that Bixler owed \$361,600 in restitution to the three sex trafficking victims. (PSR, R. 201, PageID## 1720-1721).

2. As relevant here, Bixler objected to (1) the four-level enhancement for using force against his trafficking victims; (2) the two-level vulnerable victim enhancement; (3) the two-level obstruction enhancement; (4) the two-level multiple-participant enhancement; (5) the eight-level enhancement for his violent threats toward Adrienne R.; (6) the two-level enhancement for the number of firearms involved; (7) the drug-quantity calculation; and (8) the restitution calculation. (Defendant's Sentencing Memorandum, R. 189, PageID## 1557-1560, 1567). The district court considered and overruled each of these objections. (Sent., R. 221, PageID## 3884-3886, 3890-3903, 3964-3967). The district court then considered the factors set forth in 18 U.S.C. 3553, imposed a below-Guidelines sentence of 432 months' imprisonment, and ordered \$333,740 in restitution. (Sent., R. 221, PageID## 3964-3991).

Bixler now challenges on appeal these eight issues relating to the sentence.

C. The District Court Did Not Abuse Its Discretion In Determining Bixler's Sentence

1. The District Court Did Not Clearly Err By Overruling Bixler's Objections To The Application Of §§ 2A3.1, 3A1.1, And 3C1.1

Bixler challenges (Br. 35-38) the district court's application of three enhancements based on both an alleged lack of evidentiary support and impermissible double counting. He is wrong as to both.

a. First, the district court did not clearly err by increasing Bixler's base offense level for sex trafficking by four levels because of his use of force. Section 2A3.1(b)(1) instructs a court to increase a defendant's offense level by four levels if "the offense involved conduct described in 18 U.S.C. 2241(a) or (b)." Sentencing Guidelines § 2A3.1(b)(1). Section 2241 criminalizes aggravated sexual abuse, *i.e.*, "knowingly caus[ing] another person to engage in a sexual act * * * by using force against that other person." 18 U.S.C. 2241(a)(1).

The district court properly found, based on a preponderance of the evidence, that Bixler used force against his three victims to cause them to engage in sexual acts. As the court explained, Bixler created a culture of violence in which he beat his victims if they resisted or broke his Backpage rules. (Sent., R. 221, PageID## 3884-3886).

Bixler challenges this evidence by arguing that "there was no evidence presented at trial" that he used force against Savannah G. Br. 36. This is

categorically untrue and, in any event, ignores the evidence of violence against the other victims. See p. 9, *supra*; Br. 37 (Bixler admitting “he struck Savannah G[.]”). The court did not clearly err by finding Bixler’s violence caused his victims to engage in sexual acts, thereby warranting a four-level adjustment.⁶

Bixler also incorrectly argues (Br. 36) that applying this enhancement constituted impermissible double-counting. A court errs when “precisely the same aspect of a defendant’s conduct factors into his sentence in two separate ways.” *United States v. Walters*, 775 F.3d 778, 782 (6th Cir. 2015) (citation omitted). “No double counting occurs if the defendant is punished for distinct aspects of his conduct,” and double counting is permitted when it is clear that “the Sentencing Commission intended to attach multiple penalties to the same conduct.” *Id.* (citations and alteration omitted).

Section 2A3.1(b)(1) addresses a specific aspect of Bixler’s harm: the violence he used against his victims. See *United States v. Kizer*, 517 F. App’x 415, 419 (6th Cir. 2013). This aspect of Bixler’s conduct is not fully accounted for by his offense of conviction, because the offense is not limited to trafficking committed by force. Because “no double counting occurs where, although the

⁶ Even if applying this adjustment was error, it was harmless. As the court stated, even if Section 2A3.1(b)(1) did not apply (or if the cross-reference to Section 2A3.1 was improper), Bixler’s offense level would be the same because Section 2G1.1 provides a base offense level of 34. (Sent., R. 221, PageID## 3884, 3886).

conduct underlying the two enhancements is the same,” the adjustment addresses “different aspects of the defendant’s conduct,” there was no error in applying the use-of-force enhancement here. *United States v. Farrow*, 198 F.3d 179, 191 (6th Cir. 1999) (citation omitted) (superseded by statute on other grounds).

b. Second, the district court did not clearly err in applying the vulnerable-victim enhancement. Section 3A1.1(b)(1) instructs a court to increase a defendant’s offense level by two levels if the defendant knew that his victim was particularly vulnerable. Sentencing Guidelines § 3A1.1(b)(1). A “vulnerable victim” is one “who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.” Sentencing Guidelines § 3A1.1(b)(1), comment. (n.2). The district court found that each of Bixler’s victims had the same vulnerabilities: they were homeless, unable to support themselves, addicted to drugs, and had criminal records. (Sent., R. 221, PageID## 3890-3893). This Court has held that such characteristics warrant the enhancement’s application. See *United States v. Willoughby*, 742 F.3d 229, 241 (6th Cir. 2014) (overruled on other grounds); see also, e.g., *United States v. Guidry*, 817 F.3d 997, 1009 (7th Cir. 2016).

Further, applying the vulnerable-victim enhancement here does not constitute impermissible double-counting. Section 1591 does not punish a defendant for a victim’s vulnerability. The Guidelines, on the other hand,

specifically account for a victim's particular vulnerabilities and punish the defendant for acting upon them. See *United States v. Gawthrop*, 310 F.3d 405, 408-412 (6th Cir. 2002). And while Bixler wrongly argues that the women's addictions cannot warrant this enhancement, the district court also found that the women were vulnerable due to their homelessness, financial status, and criminal histories. (Sent., R. 221, PageID## 3890-3893). Bixler does not even attempt to challenge this aspect of the district court's finding.

c. Third, the district court did not clearly err in applying the obstruction enhancement. Section 3C1.1 instructs a court to enhance a defendant's offense level if he has willfully obstructed the administration of justice related to his investigation and prosecution. The district court found that Bixler obstructed justice in two ways. First, he threatened, intimidated, and corruptly persuaded Adrienne R. and Amie P. in an attempt to influence their grand jury testimony. Second, he committed perjury while testifying on the stand, including by stating that he was not involved in selling sex through Backpage or in the women's work as prostitutes, and that none of the women worked for him. (Sent., R. 221, PageID## 3898-3901).

Bixler challenges these findings, stating that he did not lie about striking Savannah G. and arguing that whether "anyone work[ed] for him through Backpage[]" was the ultimate question for the jury. Br. 37. But Bixler lied on the

stand about the extent of his violence against Savannah G. He testified that he hit her in the ribs on “one occasion” (Tr., R. 217, PageID# 3164), whereas the record showed that he hit her weekly, leaving her face and neck covered in bruises (Tr., R. 214, PageID## 2391-2392; Tr., R. 217, PageID## 3308-3309).

Further, the district court did not hold Bixler’s answers on the ultimate question or his general denials of guilt against him when it applied this enhancement. The court made sure “not to punish [Bixler] for choosing to take the witness stand” and acknowledged that his claims of innocence did not warrant the enhancement. (Sent., R. 221, PageID## 3898-3899). Instead, the court considered Bixler’s specific testimony “categorically den[ying] any involvement in Backpage”; his “limited story about his involvement in violence”; and his testimony that he did not intend to influence Adrienne R. or Amie P.’s testimony. (Sent., R. 221, PageID## 3898-3901; see also, *e.g.*, Tr., R. 217, PageID# 3281 (“I never had no involvement in Backpage.”)). These statements permitted the court to apply the two-level obstruction enhancement. See, *e.g.*, *United States v. Collins*, 799 F.3d 554, 593-594 (6th Cir. 2015).

And, again, applying this enhancement was not double-counting. In fact, the Sentencing Guidelines expressly foreclose Bixler’s argument. See Sentencing Guidelines § 3C1.1, comment. (nn.4, 8). The application notes specifically instruct

that the enhancement applies “where there is a separate count of conviction” for the obstructive conduct. Sentencing Guidelines § 3C1.1, comment. (n.4).

2. *The District Court Did Not Clearly Err By Overruling Bixler’s Remaining Sentencing Objections*

Bixler also challenges (Br. 37-38) the application of four other Guidelines provisions—*i.e.*, those related to his multiple-participant scheme, his threats against Adrienne R., the number of firearms he possessed, and the amount of drugs that he sold—based on a lack of evidence. But the district court did not clearly err in applying any of these. Indeed, Bixler does not even engage with the basis for the court’s findings.

a. First, the district court could conclude by a preponderance of the evidence that Bixler’s scheme involved multiple participants.⁷ As the district court explained, Bixler led an extensive criminal enterprise that spanned years, involved sex and drug trafficking, and involved eight participants whom he deputized to act on his behalf. (Sent., R. 221, PageID## 3893-3898. See also Sentencing Guidelines § 3B1.1(a); *United States v. Wheeler*, 67 F. App’x 296, 304-305 (6th Cir. 2003). Bixler does not seriously contest this evidence; rather, he makes only a blanket assertion the enhancement should not apply.

⁷ Bixler argues (Br. 30) that the court erred in applying Section 3B1.1(c)’s two-level enhancement. The court actually applied Section 3B1.1(a)’s four-level enhancement. (Sent., R. 221, PageID## 3893-3898).

b. Nor does Bixler provide any basis (Br. 38) to revisit the court's finding that Bixler's "credible threat" that he would "slap [Adrienne R.'s] brains out" was sufficient to apply Section 2J1.2(b)(1)(B)'s enhancement. (Sent., R. 221, PageID# 3901; see also *United States v. Ramos*, 731 F. App'x 329, 331 (5th Cir. 2018)). Bixler instead ignores this evidence and asserts that there was "no proof" that he threatened anyone.

c. The record also permitted the district court to find that Bixler's three felon-in-possession convictions (on Counts 12, 13, and 16) involved at least three firearms. Indeed, Bixler admitted that he possessed the three weapons charged in Count 16 and other witnesses testified that Bixler gave them the four weapons charged in Counts 12 and 13. (Sent., R. 221, PageID# 3903.)

d. Finally, the court properly relied upon witness testimony and other evidence to determine that Bixler's six drug offenses between 2014 and 2018 involved more than 1 kilogram of heroin. The court found that Bixler distributed drugs to at least nine people over the course of a number of years, and the record easily surpassed the amounts in Section 2D1.1(c)(5). (Sent., R. 221, PageID## 3901-3903. See Sentencing Guidelines § 2D1.1(c)(5)). Thus, the court did not clearly err in applying Section 2D1.1(c)(5).

3. *The District Court Did Not Abuse Its Discretion In Awarding \$333,270 In Restitution To Bixler's Three Trafficking Victims*

Lastly, the court did not abuse its discretion in calculating the restitution award. Under 18 U.S.C. 1593(a) and (b)(3), courts are required to order restitution for “the full amount of the victim’s losses,” including the “gross income or value to the defendant of the victim’s services or labor.” Courts have made clear that the amount of restitution need not “be proven with exactitude,” because “determining the dollar amount of a victim’s losses” “will inevitably involve some degree of approximation.” *In re Sealed Case*, 702 F.3d 59, 66 (D.C. Cir. 2012) (citation omitted); see also *United States v. Saddler*, 789 F. App’x 952, 955 (4th Cir. 2019); *United States v. Williams*, 5 F.4th 1295, 1304-1306 (11th Cir. 2021). A district court’s approximation is sufficient when it is “based upon the facts in the record * * * with some reasonable certainty.” *In re Sealed Case*, 702 F.3d at 66.

The district court based its restitution calculation upon a conservative view of the record. It found that during the four-year period that Bixler trafficked Savannah G., she engaged in commercial sex acts for approximately 782 days and earned about \$300 per day. (Sent., R. 221, PageID## 3964-3966; Savannah G. Statement, Sentencing GX 1, App. 14). The court thus calculated her gross earnings as \$234,642. (Sent., R. 221, PageID# 3966). The court found that during the five-year period that Bixler trafficked Savannah E., she engaged in commercial sex acts for approximately 591 days and earned about \$160 per day. (Sent., R.

221, PageID## 3965-3966; Extraction Report, GX 10, App. 2). The court thus calculated her gross earnings to be \$94,628. (Sent., R. 221, PageID# 3966).

Finally, the court found that Bixler took Kaitlyn M.'s Backpage earnings for four days, that she made about \$1000 per day, and that the gross amount was \$4000. (Sent., R. 221, PageID# 3966; Tr., R. 214, PageID# 2273). The court did not abuse its discretion in awarding \$333,270 in restitution based on these "extremely conservative" findings. (Sent., R. 221, PageID## 3964-3966).

Bixler argues (Br. 38) that this calculation was "factually flawed" because it was not based upon proof at trial and had no factual support. But courts are not restricted to trial evidence when calculating restitution, and in fact are able to rely upon evidence that would be inadmissible at trial, so long as the evidence has a "sufficient indicia of reliability." See, e.g., *In re Sealed Case*, 246 F.3d 696, 699-700 (D.C. Cir. 2001). Further, the court considered the full record in assessing the appropriate restitution amount by weighing the relevant testimony and other evidence to ensure that its ruling was consistent with the record. (Sent., R. 221, PageID## 3964-3966).

Bixler also argues, for the first time, that the restitution order is improper because the court did not "reduce the claimed amount by the value of items supplied to the alleged victims." Br. 38-39. Even if this Court considers Bixler's argument, it fails. Section 1593 specifies that courts must order restitution

including the “*gross* income or value” that the defendant made from the victims’ work. 18 U.S.C. 1593(b)(3) (emphasis added). “[B]y emphasizing that the victim is entitled to the ‘gross income’ derived from her trafficking, the text is clear: she is entitled to the full amount, without any offset.” *Williams*, 5 F.4th at 1306. The district court did not abuse its discretion by applying the statute as written.

CONCLUSION

For the foregoing reasons, this Court should affirm Bixler’s convictions and sentence.

Respectfully submitted,

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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 12,895 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 2019 in Times New Roman, 14-point font.

s/ Janea L. Lamar
JANEA L. LAMAR
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Date: September 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2021, 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/ Janea L. Lamar
JANEA L. LAMAR
Attorney

ADDENDUM

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
32	Second Superseding Indictment	181-189
72	Government's Motion in Limine	412-420
77	Defense Opposition to Motion in Limine	435-439
87	Defense <i>Daubert</i> Motion	476-477
87-1	Defense <i>Daubert</i> Memorandum	478-482
98	Order on Government's Motion in Limine	506-519
103	Government's Opposition to <i>Daubert</i> Motion	532-540
123	Order on Defense <i>Daubert</i> Motion	693-699
151	Minute Entry	854-855
189	Defense Sentencing Memorandum	1557-1571
198	Judgment	1698
200	Notice of Appeal	1707-1708
201	Presentence Investigation Report	1709-1774
213	Transcript of Jury Trial, Day 1 of 7	1902-2227
214	Transcript of Jury Trial, Day 2 of 7	2228-2509
215	Transcript of Jury Trial, Day 4 of 7	2510-2808
216	Transcript of Jury Trial, Day 5 of 7	2809-3063

Record Entry Number	Description	PageID# Range
217	Transcript of Jury Trial, Day 6 of 7	3064-3402
218	Transcript of Jury Trial, Day 7 of 7	3403-3533
220	Transcript of Jury Trial, Day 3 of 7	3584-3811
221	Transcript of Sentencing Hearing	3812-3994