IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NOS. **19-11972-EE, 19-13019-EE**

United States of America,

Appellee,

- versus -

Alston Orlando Leroy Williams,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

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United States v. Alston Orlando Leroy Williams,
Case Nos. 19-11972-EE, 19-13019-EE
Certificate of Interested Persons

In compliance with Fed. R. App. P. 26.1 and 11th Circuit Rules 26.1 and 28-1, the undersigned certifies that the list set forth below is a complete list of the persons and entities previously included in the CIP included in the appellant's initial brief, and also includes additional persons and entities (designated in bold face) who have an interest in the outcome of this case and were omitted from the appellant's CIP.

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Colan, Jonathan D.

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Certificate of Interested Persons (Continued)

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Mariani, Nicole D.

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United States of America

Victim 1

Victim 2

Victim 3

Williams, Alston Orlando Leroy

Certificate of Interested Persons (Continued)

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Statement Regarding Oral Argument

The United States of America respectfully suggests that the facts and legal arguments are adequately presented in the briefs and record before this Court and that the decisional process would not be significantly aided by oral argument.

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Statement of Jurisdiction

This is an appeal from a final judgment of the United States District Court for the Southern District of Florida in a criminal case. The district court entered judgments against Alston Williams on May 8, 2019 and on July 29, 2019 (DE:204; DE:280). The district court had jurisdiction to enter the judgments pursuant to 18 U.S.C. §3231. Williams filed a timely notices of appeal on May 20, 2019, and on August 5, 2019 (DE:207; DE:283). *See* Fed. R. App. P. 4(b). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. §1291 and authority to examine Williams's challenges to his sentence pursuant to 18 U.S.C. §3742(a).

Statement of the Issues

I. Whether sufficient evidence supported Williams' convictions for sex trafficking DR.

II. Whether the court abused its discretion in admitting nude images and videos Williams took of his victims.

III. Whether the court abused its discretion by declining to instruct the jury that consent is a defense to sex trafficking by force, fraud, or coercion.

IV. Whether Williams' sentence is substantively unreasonable.

V. Whether the court clearly erred in calculating restitution.

Statement of the Case

1. Course of Proceedings and Disposition in the Court Below

On August 2, 2018, a Southern District of Florida grand jury charged Williams with sex trafficking minor DL[1], in violation of 18 U.S.C. §1591, from December 23, 2008 through March 11, 2009 (Count 1); sex trafficking DL, in violation of 18 U.S.C. §1591, from March 11, 2009 through September 2012 (Count 2); sex trafficking RC, in violation of 18 U.S.C. §1591 (Count 3); sex trafficking GRL, in violation of 18 U.S.C. §1591, from June 2014 through spring 2016 (Count 4); forced labor trafficking GRL, in violation of 18 U.S.C. §1589(a) (Count 5); sex trafficking

[1] To protect the victims, they are referred to by their initials and the Government exhibits were filed with the court on a sealed DVD (DE:168; DE:169).

TL, in violation of 18 U.S.C. §1591 (Count 6); sex trafficking TL, in violation of 18 U.S.C. §1591 (Count 7); sex trafficking KC, in violation of 18 U.S.C. §1591 (Count 8); sex trafficking minor DR, in violation of 18 U.S.C. §1591, from July 27, 2006 through July 26, 2008 (Count 9); sex trafficking DR, in violation of 18 U.S.C. §1591, from December 23, 2008 through December 2016 (Count 10); and obstructing enforcement of the sex trafficking laws, in violation of 18 U.S.C. §1591(d) (DE:25).

On December 20, 2018, the jury convicted Williams of trafficking DL (Counts 1-2), GRL (Count 4), and DR (Counts 9-10) and of obstructing justice (Count 11), and it acquitted him of Counts 3 and 5-8 (DE:204; DE:205). The court sentenced Williams to life imprisonment on Counts 1, 2, 4, 9 and 10 and 240 months' imprisonment on Count 11, all to run concurrently, and to pay $773,600 in restitution (DE:204; DE:280).

This timely appeal followed (DE:207; DE:283).

2. Statement of the Facts

For over 13 years, Williams used a combination of violent physical abuse, emotional manipulation, isolation, and constant surveillance to coerce vulnerable teenage girls to prostitute nearly every night, often seeing more than 20 different men a night, while he took all their earnings (DE:292:245). Even though Williams never worked himself during that time, he purchased two large homes, multiple luxury cars, expensive stereo equipment, and a closet full of designer clothes and

sneakers (DE:292:245, 297; DE293:277-78; DE:294:33, 76; DE:295:146; DE:296:22, 78; DE:297:287). When his victims were not prostituting, Williams confined them in his house and required them to cook, clean, and have sex with him (DE:293:214, 240; DE:295:101, 173-74; DE:296:44, 63-69).

Williams' horrific scheme began in 2004 when he pursued a romantic and sexual relationship with 17-year-old TL (DE:292:195-200).[2] Once TL turned 18, the 28-year-old Williams convinced her to move into his apartment, and, once she arrived, he took her identification documents, forced her to drop out of school, and took all her earnings from her part-time job at Walgreens (DE:292:198-203).[3] If TL's paychecks were small or she withheld money from Williams, he violently beat her (DE:292:200-07, 221-26). TL also tattooed Williams' name on her ankle (DE:292:204).[4]

Soon thereafter, TL, believing a better-paying job would stop Williams from beating her and without realizing it was a front for prostitution, accepted a job at an

[2] Traffickers often chose vulnerable victims, such as minors and homeless or impoverished people (DE:292:122-23). Traffickers often feign relationships with victims to gain trust and groom them for sexual conduct (DE:292:125-28).

[3] Traffickers often take their victim's identification to prevent her from traveling, seeking employment, opening a financial account, or identifying herself to law enforcement (DE:292:147). Another common tactic is to isolate the victim from her family, friends, and places she frequented, making the trafficker the only consistent person in her life (DE:292:133).

[4] Traffickers often "brand" their victims with tattoos (DE:292:119).

escort agency that offered to pay $1000 a day (DE:292:130, 205-08). After her first client offered her $180 for sex, TL declined, left, and told Williams what happened (DE:292:208-09). Williams, excited by how much money TL could earn prostituting, dropped her off at the escort agency and refused to pick her up until she earned a certain amount of money (DE:292:209-12). When Williams finally returned for TL several days later, he took all her earnings (DE:292:211-12).

For the next nine years, TL worked and primarily lived at the escort agency, seeing 20 clients every day while Williams took all her earnings (DE:292:213-17, 239-46; DE:293:8). TL saw additional clients who responded to prostitution advertisements Williams demanded she place on the website Backpage,[5] and Williams also took those earnings (DE:292:241-42). Because Williams took any money TL earned, she relied on him to provide her with food, shelter, and clothing (DE:292:240-41).[6] TL did not want to prostitute, and did so only because she was terrified Williams would harm her if she did not (DE:292:217, 228-29, 317, 334; DE:293:18). Indeed, Williams was regularly violent with TL, knocking her unconscious, shocking her with a taser, scalding her, choking her, throwing her against the wall, giving her black eyes, splitting her lip, and sticking her with needles

[5] Backpage is a now-defunct website commonly used by traffickers to advertise prostitutes (DE:292:130).

[6] Traffickers often make the victims dependent on them for basic needs to maintain control (DE:292:127).

(DE:292:211-26). When TL became pregnant, Williams threw her to the ground, forced her to have an abortion, and made her prostitute within two weeks (DE:292:303-05). Williams also regularly told TL he would kill her (DE:292:227).

Within six months of TL going to the escort agency, Williams used her prostitution earnings to buy a house in Tamarac, Florida, which he equipped with interior and exterior surveillance cameras (DE:292:215-16, 226, 309). Once in the Tamarac house, Williams victimized a second teenaged girl, MB, convincing her to move in with him, physically abusing her, sending her to prostitute, and taking all her earnings (DE:292:228, 259-64; DE:295:188).

Two years later, Williams found a third victim, 16-year-old DL (DE:295:85). MB knew DL from school and used social media to contact her, telling DL she could "make her life better" and that she worked in hotels, which DL believed meant she was a receptionist or housekeeper (DE:295:86-88). When DL visited MB at a hotel, she realized MB was a prostitute but stayed because she wanted a friend (DE:295:88-92). Williams then began driving DL from her father's apartment to visit MB at hotels, and, knowing DL was 16 years old, initiated a romantic and sexual relationship with her (DE:295:89-96). Williams encouraged DL to drop out of school

and prostitute, telling her he would manage the money because "we are all a family"[7] (DE:295:90-93).

DL prostituted for the first time when she was 16 years old after one of MB's clients, seeing DL at the hotel, asked to have sex with DL instead (DE:295:96). DL did not want to prostitute, but Williams convinced her to do it "for the family" and then took her earnings (DE:295:96-99). After DL turned 17 years old, Williams became violent, demanded she prostitute one to two nights a week, and took all her earnings (DE:295:96-100, 147-51). DL did not want to prostitute and she did not want to have sex with Williams, but she did both because she was afraid Williams would hurt her if she did not (DE:295:101, 190-92).

In early 2008, Williams found his fourth victim, DR, when he saw her standing alone in a dangerous neighborhood (DE:292:269, 273-75; DE:295:102-03). At Williams' direction, MB and DL approached DR, told her they were prostitutes, and convinced her to move into the Tamarac house with Williams and MB (DE:295:102-04). When DR arrived, she told Williams she was 17 years old and Williams took her identification documents, which stated she was a child (DE:292:276, 296; DE:295:102, 108-09). Once DR was at the Tamarac house, Williams violently beat and threatened her, DR began prostituting, and Williams

[7] Traffickers often refer to themselves and their victims as a "family" (DE:292:118-19).

took all her earnings while monitoring her location using her phone[8] (DE:292:228, 260-79; DE:293:201, 344-50; DE:295:105-06, 115-16, 249). On April 22, 2008, 17-year-old DR was arrested for prostitution after she took money from an undercover officer for sex, and Williams was also arrested because, when the officer had DR call him, he told DR to take the money and have sex (DE:293:107-36). Because DR was a minor, she was sent to a juvenile detention facility while Williams was taken to the police station (DE:292:118-19).

After DR was released from juvenile detention, she returned to Williams and Williams returned to violently abusing her and taking her prostitution earnings. Indeed, Williams gave DR black eyes, beat her in the face with his shoe, hit her in the head with a bottle, shocked her with a taser, and used pliers to crush her hand (DE:293:276, DE:295:185-88). One night, Williams tied DR up with rope, stuffed her into his car's trunk, and drove around for an hour while stating he was "going to get rid of her" as she screamed (DE:293:274-75). When Williams discovered he had impregnated DR, he hit her and made MB punch her in the stomach and stomp on

[8] Traffickers often give phones to the victims, which become "an electronic leash" permitting the trafficker to use the phone's GPS to track their victims' every move (DE:292:135).

her (DE:295:188). Williams often told DR she would die of AIDS, and he forced her to watch while he abused other victims (DE:292:281; DE:293:273-74).[9]

In March 2009, on her 18th birthday, DL moved into the Tamarac house with Williams, MB, and DR (DE:295:100). Upon DL's arrival, Williams ended their romantic relationship, took her identification documents, monitored her location through her phone, and prohibited her from leaving the house without permission (DE:293:344-50; DE:295:100-01, 149-53, 209). Williams increased the violence he inflicted on DL, abusing her every week by hitting her, kicking her, punching her, cutting off her hair with a machete, burning her hand, shocking her with a taser, throwing her on the floor, choking her until she was unconscious, and knocking her unconscious by hitting her with his car (DE:295:173-87). When Williams caught DL trying to escape, he clamped a pair of pliers on her hand and dragged her through the house (DE:295:178-80). Williams also threatened to shoot DL and kill her family if she left (DE:295:193). While she was 18 years old, Williams impregnated DL twice, and both times he made her go alone to have an abortion (DE:295:157-58). Williams also forced DL to watch as he abused TL, MB, and DR, including when he threatened TL with a knife and a rifle (DE:292:225-26; DE:295:164-65, 189-90).

[9] Traffickers use "vicarious victimizations," which is inflicted by beating one victim in front of the others, to establish dominance (DE:292:132).

To avoid being harmed by Williams, DL went with DR to prostitute nearly every night while Williams took all their earnings, which was often $500 to $1,000 a night, and, when they were not prostituting, Williams demanded they do household chores and have sex with him (DE:292:260; DE:295:100, 122-24, 133-39, 148, 165-65, 173-75). DL also followed Williams' other demands, including taking unwanted nude photographs, having unwanted sex with Williams while he videotaped, and engaging in unwanted sexual conduct with DR while Williams directed and videotaped (DE:293:228-30; DE:295:116-17, 197-99). Williams kept copies of those images and videos on multiple digital devices (GX17; GX36). Williams had DL and DR get tattoos with his name and each other's names (DE:295:161-62).

By 2011, MB was gone and Williams, now 35 years old, went in search of a new victim at a party thrown by his teenaged neighbor, which is where he, DR, and DL met 18-year-old RC (DE:293:160-66). After DR and DL told RC about their big house and extravagant lifestyle, Williams began calling and texting RC, flirting with her and encouraging her to move in with them (DE:293:165-76, DE:295:117-18). Within a few days, RC moved into the Tamarac house, believing Williams was her boyfriend (DE:293:175-83).

Once RC arrived, Williams took her identification documents and forced her to drop out of school (DE:293:197-200). Williams continued his romantic relationship with RC for several months before sending her to the escort agency with

DL (DE:293:182-85). After prostituting with DL, RC returned to the Tamarac house, Williams took all her earnings, and he violently beat her (DE:293:187-89, 192, 266). For the next five years, RC prostituted nearly every night, often seeing 20 clients a night, while Williams took all her earnings, because she was terrified Williams would hurt or kill her (DE:293:189, 196, 200-01, 217-20, 261-66, 284; DE:294:106). When RC was not prostituting, Williams demanded she do household chores, monitored her communications and location, required her to obtain his permission before eating or sleeping, and controlled her appearance, forcing her to have multiple unwanted plastic surgeries so she could make more money prostituting (DE:293:202, 210-14, 240-41, 283, 306, 328-35, 344, 350).

If RC did not earn enough money for him, Williams turned on loud music to cover her screams and beat her so severely she believed she would die (DE:293:266-72). He knocked RC unconscious multiple times, beat her pubic area until she bled, poked her with needles, shocked her with a taser, punched her, slapped her, handcuffed her, dragged her down the stairs, attempted to drown her, and squeezed her finger with pliers (DE:293:266-82). Williams forced DR to watch while he abused RC, and he forced RC to watch while he abused DL and DR (DE:293:273-80, 201). On three separate occasions, Williams pointed his rifle at RC's face and told her to "imagine not being here anymore" (DE:293:201; DE:294:39-40). Williams threatened to kill RC and her family if she left him (DE:293:201;

DE:294:39-40). To keep Williams happy, RC tattooed Williams', DR's, and DL's names on her back, and DR and DL added RC's name to their tattoos (DE:293:195-97, 251-53; DE:295:161, 201, 263).

Throughout 2011 and early 2012, DL, DR, and RC prostituted every night, and Williams took all their earnings (DE:293:210-12; DE:295:118-19). On March 30, 2012, DL, DR, RC, and Williams were arrested for prostitution after RC accepted money for sex from an undercover officer; Williams had $1,400 in his pocket, an expandable baton, and pepper spray (DE:294:221-34; DE:295:142-44, 245-51). Later in 2012, DL escaped from Williams after she convinced an escort agency employee to drive her to her mother's house and she then fled with her sister to St. Petersburg, Florida (DE:295:154-55, 192-95). After DL's escape, RC, DR, and TL continued to prostitute nearly every day with clients from the escort agencies and Backpage, and Williams continued to take all their earnings (DE:291:231; DE:292:229-30, 238, 279; DE:293:216-17, 231-32, 262-63, 274-78, 321; DE:294:6, 235).

In May 2013, Williams targeted 16-year-old GRL, who was a homeless high school dropout he saw walking alone (DE:296:11-14, 141). Upon seeing GRL, Williams had RC encourage GRL to join them, and, within a week, GRL moved into the Tamarac house (DE:294:62-64; DE:296:11-20). Williams, knowing GRL was a child, immediately began a sexual relationship with her (DE:296:19-20, 116). GRL

did not want to have sex with Williams but did so because she needed food and shelter (DE:296:73). After a few months, Williams talked to GRL about becoming a prostitute with DR and RC, and she observed Williams bring DR and RC to prostitute and take all their earnings (DE:296:21-22, 43-47).

Williams violently abused GRL, hitting and slapping her, shocking her with a taser and an electric bug zapper, crushing her finger with pliers, beating her in the groin until she bled, punching her, kicking her, and choking her (DE:294:66-67; DE:296:62-63, 91-111). Williams held a firearm against GRL's leg while telling her he would kill her if she left (DE:296:107-08, 180). Williams also ordered GRL to watch him abuse DR (DE:296:109). Williams took and kept nude photographs of GRL, which she did not want him to take (DE:296:70-72, 200). Indeed, in two of the photographs, GRL is covering her face with her hands (GX5an; GX5ao). In another photograph, a nude GRL is stuffed inside of a clothes dryer with a live bird (DE:294:66-67; GX36j:12). Williams also videotaped himself having sex with GRL while she was a child (DE:296:116; GX36e).

On March 5, 2014, the police arrested Williams, RC, and DR after RC and DR accepted money from an undercover officer for sex and then brought that money to Williams, who was waiting nearby with GRL (294:245-53; DE:296:22-25; DE:297:87-92). Because GRL was a minor, child services placed her with relatives in Kissimmee, Florida (DE:296:28-31). GRL stayed with her relatives for five

months before Williams found her, and, when Williams arrived, GRL left with him because she was terrified he would kill her or her relatives if she refused (DE:296:29-31, 146).

Once GRL returned to Tamarac, Williams had her tattoo his name on her hand and demanded she prostitute, sending her to the escort agency and having her advertise on Backpage (DE:296:33-37, 51, 88). By May 2015, GRL was prostituting five nights a week, making $500 a night, and giving Williams all her earnings (DE:296:32, 38-41). GRL did not want to prostitute and did so only to avoid Williams' beatings (DE:296:36-41, 51, 76). Williams kept GRL under constant surveillance and never permitted her to be alone (DE:296:44).

In 2015, Williams, using the victims' prostitution earnings, bought a five-bedroom house with a pool in Lake Worth, Florida, and he moved there with RC, DR, GRL, and his mother (DE:291:179-80; DE:293:277-78; DE:294:68). The house had external and internal surveillance cameras and an office secured with a digital lock to which only Williams had the code (DE:291:184, 188; DE:294:11, 34-37; DE:296:77-78). Williams kept the house's windows covered with hurricane shutters or blackout curtains (DE:291:182, 204; DE:294:70). He required the victims to sleep in the living room where he could watch them, and the victims needed his permission to eat, sleep, or go outside (DE:294:68-70, 121, 131; DE:296:39, 74, 121-31).

After moving to Lake Worth, DR, RC and GRL continued to prostitute and Williams attempted to make CR his next victim (DE:294:48). After luring CR to the house, Williams took her identification documents, beat her, and videotaped her engaging in sexual conduct with RC while he directed with a taser nearby (DE:294:48-54; DE:297:9). CR, however, escaped (DE:294:54; DE:297:11-16).

In April 2015, Williams met his son DW's 18-year-old girlfriend KC while visiting DW in Jacksonville and decided she was his next victim (DE:294:40-41; DE:297:100-04). Williams convinced his son to persuade KC to move to South Florida to live with him under the ruse that Williams could find her a job (DE:297:101-06). When KC arrived at the Lake Worth house, Williams took her identification documents and ignored her for several months before instructing RC to bring her to the escort agency (DE:297:107-35, 178-79, 277-78). KC did not realize she was a prostitute until her first client violently raped her when she refused to have sex with him for money (DE:297:120-35). KC was distraught, but Williams refused to allow her to contact DW or her family (DE:297:136-37, 174). Instead, Williams told KC that, if she did not prostitute, he would leave her alone in a dangerous area of Miami and he violently beat her (DE:297:145-46, 163-66). Because KC was terrified of Williams, she prostituted every night, earning $1,000 a night, and Williams took all her earnings (DE:297:137-39, 152, 179, 184).

In August 2015, GRL escaped, convincing an escort agency employee to drive her to her brother's house, but, after a week, GRL returned to Williams because she was terrified he would find her and hurt her (DE:296:47-50). After she returned, Williams did not allow GRL to have a phone, never let her out of his sight, and, instead of prostituting, demanded she cook, clean, and have sex with him (DE:296:50-52, 81, 84).

In fall 2015, DW moved into the Lake Worth house (DE:297:137-39). Williams forced DW and KC to live in a detached room next to the pool, did not permit them to use the kitchen or bathroom, and demanded DW physically abuse KC (DE:297:137-39, 154-69). Although KC was supposed to give all her earnings to Williams, she hid a small amount every day and, after DW's mother encouraged them to flee, she and DW decided they had enough money to escape (DE:297:180-83). KC and DW snuck out of the Lake Worth house and into DW's car, threw their phones out the window so Williams could not track them, and sped home to Jacksonville (DE:297:183-84).

After KC escaped, RC and DR continued to prostitute and Williams continued to take all their earnings while GRL maintained the house (DE:296:52, 63-73).[10] In

[10] DR left in either February 2016 or February 2017 (DE:294:144; DE:296:52). In his post-arrest statement, Williams said DR gave birth to his child and lived in central Florida (GX69).

March 2016, Williams impregnated GRL, demanded she have an abortion, and then forced her to have sex with him four days later (DE:296:58-61, 73).

On November 29, 2017, Williams' reign of terror ended. RC, unable to take any more, told GRL she wanted to escape and GRL agreed (DE:291:165-72, 165; DE:294:79-81). RC used an encrypted messaging app to contact her father, and he put RC in contact with the police (DE:291:165-68; DE:294:81-83, 103). The police set up a fake prostitution date that evening to rescue RC and GRL, which they did when Williams, bringing GRL along, dropped RC off at a hotel to prostitute (DE:291:166-72). When he was arrested, Williams had a retractable baton, a baseball bat, and two folding knives in his car (DE:291:238-42).

After the police arrested Williams, they searched the Lake Worth house (DE:291:173). Inside of the locked office, they found a loaded .223 caliber assault rifle, three 30-round magazines, a bandolier loaded with shotgun shells, boxes of ammunition, a taser, a notebook listing sex trafficking websites, a bag filled with phones, $12,000 in cash, and identification documents for DL, DR, RC, CR, and GRL (DE:291:188, 213-38; DE:293:280-81, 288). There were over 60 phones and computers located throughout the house (DE:291:235-36, 249-50, 285). There was a second rifle in a bedroom closet, and there were three luxury cars in the garage (DE:291:195, 255; DE:292:245-46; DE:294:76; DE:295:146; DE:296:22, 78).

3. Standards of Review

The sufficiency of the evidence is reviewed *de novo*, with the record viewed in the light most favorable to the verdict and all credibility determinations resolved in favor of the verdict. *United States v. Mozie*, 752 F.3d 1271, 1285 (11th Cir. 2014). Evidentiary rulings, the denial of a requested jury instruction, and the sentence's reasonableness are reviewed for an abuse of discretion. *United States v. Blake*, 868 F.3d 960, 975 (11th Cir. 2017); *United States v. Rutgerson*, 822 F.3d 1223, 1236 (11th Cir. 2016); *Mozie*, 752 F.3d at 1289. The restitution calculation is reviewed for clear error. *United States v. Baston*, 818 F.3d 651, 660 (11th Cir. 2016).

Summary of the Argument

This Court should affirm Williams' convictions and sentence. First, sufficient evidence supports Williams' convictions for sex trafficking DR. Multiple victims provided corroborated testimony that Williams knew DR was 17 years old when she began prostituting and that Williams, through a campaign of violence and manipulation, coerced DR to prostitute while taking all her earnings. Second, the court did not abuse its discretion in admitting nude images and videos Williams took of his victims, because those highly probative digital files demonstrated Williams' dominance over his young victims and were not unduly prejudicial in light of the other evidence of sexual violence and the jury's prescreening for sensitivity to explicit content. Third, the court did not abuse its discretion in declining to instruct

the jury that victim consent to the commercial sex act is a defense to sex trafficking by force, fraud and coercion, because that is not an accurate statement of law. Fourth, Williams' life imprisonment sentence is substantively reasonable, because it is within his guidelines range and justified by the severe trauma he imposed for over 13 years on multiple vulnerable victims so he could live a life of unearned luxury. Finally, the court did not clearly err in calculating restitution, because the restitution amount was a reasonable estimate of the prostitution earnings Williams took from his victims. DR did not renounce restitution, and, even if she had, Williams still had to repay the prostitution earnings he took from her.

Argument

I. Sufficient Evidence Supported Williams' Convictions for Trafficking DR.

Although he does not dispute DR prostituted nearly every night for over a decade while he violently beat her, controlled her every movement, and took all her earnings, Williams argues he cannot be convicted of sex trafficking DR as a minor because the Government did not prove he knew she was 17 years old when she began prostituting and he cannot be convicted of sex trafficking DR as an adult because the Government did not prove his conduct coerced her to prostitute. The evidence, however, proves otherwise.

To convict Williams of sex trafficking minor DR, the Government had to prove he "knowingly, in or affecting interstate commerce … recruit[ed], entice[d], harbor[ed], transport[ed], provide[d], or obtain[ed]" DR "knowing that" she had "not attained the age of 18 years and will be caused to engage in a commercial sex act." 18 U.S.C. §1591(a)(1) (July 27, 2006).[11] The evidence certainly demonstrated Williams knew DR was 17 years old when he recruited and enticed her to move into the Tamarac house and prostitute, housed her while she prostituted, transported her to prostitute, and took all her earnings.

DL and TL testified DR told Williams she was 17 years old when she moved into his home and began prostituting (DE:292:260-75; DE:295:102-09, 249). DL testified that, when DR moved into the Tamarac house, Williams took DR's identification documents, which stated she was a minor (DE:295:108-09, 153). DL also testified DR prostituted when she was a minor, she and DR went on joint prostitution dates when they were minors, Williams transported them to prostitution dates when they were minors, Williams took all of their prostitution earnings when they were minors, and she heard Williams direct DR to advertise herself as a prostitute on Backpage when she was a minor (DE:295:105-06, 249). On the present procedural posture, TL's and DL's testimony is sufficient to prove Williams knew

[11] Because Williams trafficked minor DR from July 27, 2006 until July 26, 2008, a prior version of §1591 applies.

DR was a minor when she moved into his home and began prostituting. *See Mozie*, 752 F.3d at 1285 (holding this Court must credit testimony supporting the jury's verdict when reviewing the sufficiency of the evidence).

Further, other evidence corroborated TL's and DL's testimony. On April 22, 2008, DR was arrested alongside Williams for prostitution when she was a minor (DE:293:107-35). Because DR was a minor, she was sent to a juvenile detention facility while Williams was taken to the police station (DE:293:118-35). DL testified, after DR was released from juvenile detention, she returned to Williams and resumed prostituting (DE:295:106, 115). When Williams was arrested in 2017, law enforcement found multiple copies of DR's birth certificate inside his locked safe, one of which was issued while DR was a minor (DE:291:229-30). And, law enforcement found photographs of a 17-year-old DR in hotel rooms like those where the victims prostituted on Williams' digital devices (DE:292:269-73; GX6b). A reasonable jury certainly could have found Williams knew DR was 17 years old when she prostituted for him and, thus, he sex trafficked a child. *See United States v. Herrera*, 931 F.2d 761, 762 (11th Cir. 1991) ("A jury's verdict cannot be overturned if any reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt.").

To convict Williams of sex trafficking DR once she was an adult by force, fraud, or coercion, the Government had to prove he "knowingly, in or affecting

interstate or foreign commerce" recruited, enticed, harbored, transported, provided, obtained, or maintained DR "knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion . . . or any combination of such means will be used to cause" DR "to engage in a commercial sex act." 18 U.S.C. §1591(a) (December 23, 2008).[12] "Coercion" includes "threats of serious harm to … any person" and "any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to … any person." 18 U.S.C. §1591(e). "Serious harm" is

> any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

18 U.S.C. §1591(e)(4). Contrary to Williams' contention, there was ample evidence demonstrating he engaged in a scheme with the intent of causing DR, who was an uneducated teenager without a stable family, to believe that, if she did not prostitute and give him all her earnings, she would suffer serious harm, including physical violence, starvation, and homelessness.

[12] Because Williams trafficked DR as an adult from December 23, 2008 through December 2016, a prior version of §1591 applies.

Multiple victims testified Williams regularly battered DR, inflicting particularly brutal beatings when she did not bring him adequate prostitution earnings. TL and DL testified Williams was the most violent towards DR of any of his victims, noting Williams gave DR a black eye, hit her in the head, shocked her with a taser, and crushed her hand with pliers (DE:293:274-76; DE:295:187-88). TL testified that DR was always "bruised up" (DE:292:279-81). RC and GRL watched Williams brutally beat DR, and RC specified that, when DR did not bring Williams enough prostitution earnings, Williams brought DR into the garage and beat her while she screamed (DE:293:178-80, 274; DE:295:43, 47, 109). RC testified she watched Williams tie DR up with rope, stuff her into his car's trunk, and drive around for an hour claiming he was "going to get rid of" her while she screamed (DE:293:274-75). RC and GRL testified Williams made DR watch while he beat them so she "would learn" (DE:293:273; DE:295:109).

In addition, TL and RC testified Williams regularly threatened DR with harm (DE:292:281; DE:293:201). DL testified Williams forced her and DR to have unwanted sexual interactions while he directed and videotaped them, and RC testified Williams took nude photographs of DR (DE:293:228-30; DE:295:116-17, 199). Indeed, law enforcement found four videos of DL and DR engaging in sexual acts while Williams recorded and directed them, and they found multiple nude photographs of DR on Williams' digital devices, giving Williams the ability to use

those digital files for any purposes he wanted (DE:295:198-99; GX17g-j; GX36j:6, 16). RC testified that DR was branded with a tattoo with Williams' name (DE:293:213, 250-52).

The victims also testified Williams isolated DR and made her dependent on him for survival. TL and DL testified, when DR arrived at the Tamarac house, Williams took her identification documents (DE:292:276; DE:295:108-09, 153). DL and RC testified Williams took all of DR's prostitution earnings, leaving her penniless (DE:293:177-78, 210-12; DE:295:115-16). TL, DL, RC, and GRL testified Williams kept the victims, including DR, sequestered in a house where the exits were locked, the windows were blocked with hurricane shutters or blackout curtains, the victims were monitored by surveillance cameras, and Williams kept high-capacity firearms, tasers, and other weapons within his reach (DE:291:182-223; DE:292:226; DE:294:34-37, 70; DE:296:77-78). RC and GRL testified the victims, including DR, could not eat, sleep, or leave the house without Williams' permission (DE:294:68-70, 121, 131; DE:296:39, 74, 121-31).

DR did not prostitute every night for a decade and give all her earnings to Williams because she liked to prostitute. She prostituted every night for no personal financial gain to avoid starvation, homelessness, brutal beatings, and death. There can be no question Williams engaged in a long-running "scheme, plan, or pattern intended to cause" DR "to believe that failure to" prostitute "would result in serious

harm" to her. 18 U.S.C. §1591(e)(2)(B). *See e.g., United States v. Williams*, 714 F. App'x 917, 918-19 (11th Cir. 2017) (finding sufficient evidence of coercion where defendant physically abused victims, established romantic relationships with victims, and provided victims with food, shelter, and clothing); *United States v. Fields*, 625 F. App'x 949, 952 (11th Cir. 2015) (finding sufficient evidence of coercion where defendant placed online prostitution advertisements for victims, drove victims to prostitution dates, housed victims, and withheld drugs to which victims were addicted if they did not prostitute). Accordingly, a reasonable jury certainly could have convicted Williams of sex trafficking DR by force, fraud or coercion.

II. The Court Did Not Abuse Its Discretion in Admitting Nude Images and Videos Williams Took of His Victims.

At trial, Williams objected to the admission of some of the images and videos he took of his victims, conceding they were relevant but maintaining their explicit nature rendered them unduly prejudicial (DE:291:291-92; DE:293:221-27; DE:295:197-200; DE:296:72, 114). The Government argued the digital files were highly probative, explaining they demonstrated Williams dominated and degraded his victims by forcing them to engage in sexual conduct and keeping evidence of that behavior to use however he pleased (DE:293:225). The court overruled Williams' objections, noting he "conceded relevancy" and finding the digital files

were not unduly prejudicial because, during *voir dire*, the jury was "carefully questioned" about their ability to consider graphic sexual material and it would be "impossible" to excise the explicit portions of those digital files (DE:293:226-27). On appeal, Williams generally reiterates his argument that Rule 403 prohibits the admission of those images and videos, because the content he created is too explicit for any jury to see. That argument is unpersuasive.

Evidence is relevant and admissible if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Under Rule 403, however, a court can exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." Fed. R. Evid. 403. Rule 403 is "an extraordinary remedy that should be used sparingly," because "relevant evidence is inherently prejudicial; it is only when *unfair* prejudice *substantially* outweighs probative value that the rule permits exclusion." *United States v. Flanders*, 752 F.3d 1317, 1335 (11th Cir. 2014); *United States v. Lopez*, 649 F.3d 1222, 1247 (11th Cir. 2011) ("[W]e will find that the district court abused its discretion under Rule 403 in only the rarest of situations."). Accordingly, "in reviewing issues under Rule 403," this Court must "look at the evidence in the light most favorable to its admission, maximizing its probative value and minimizing its undue prejudicial impact." *Flanders*, 752 F.3d at 1335.

The sexually graphic images and videos Williams took and retained of his victims were highly probative because they demonstrated Williams' dominance over his young victims. *See United States v. Atkins*, 702 F. App'x 890, 897 (11th Cir. 2017) (finding evidence victims engaged in sex acts with their trafficker probative because it "showed the influence and the improper relationship" the trafficker had with his victims). Indeed, the images and videos showed Williams instructing his young victims, while they were nude, to engage in sexual conduct while he watched, directed, and recorded them, on one occasion with a weapon in view of the camera (DE:293:228-29; DE:295:197-99; GX5aj; GX5an; GX5ao; GX17d-j; GX36d-g; GX36j). In one of his images, Williams photographed a nude GRL stuffed inside of a clothes dryer with a live bird (GX36j). Williams then kept those digital files, often on multiple devices, to use however he wished (*id.*). Williams is responsible for the explicit nature of the digital content he created of his victims, and he cannot now contend, because he was so depraved and dominating, the Government cannot use his digital files to prove its case against him.

The digital files were also highly probative because they corroborated the victims' testimony. DL testified Williams forced her to engaged in unwanted sexual conduct with him and with DR, which was corroborated by nude images of DL and DR, a video of Williams having sex with DL, and videos of DL and DR engaging in sexual behavior while Williams directed them (DE:293:228-30; DE:295:197-99;

GX17d-j; GX36d; GX36g; GX36j). GRL testified she had an unwanted sexual relationship with Williams, including when she was a minor, which was corroborated by a video Williams took of himself having sex with GRL while she was a child and by the nude images of GRL that Williams took while GRL covered her face with her hands (DE:296:70-73, 116; GX5an; GX5ao; GX36d; GX36e). RC testified Williams shocked her with a taser and she followed Williams' orders because she was terrified he would harm her, which was corroborated by the video of Williams directing RC and CR to engage in specific sex acts while a taser sat nearby (DE:293:192, 266-79; DE:294:51-52; GX36f).

Those highly probative digital files were not unduly prejudicial. The Government discussed the digital files briefly during Williams' 13-day trial, the videos of DL and DR engaging in sexual behavior were not shown to the jury, and none of the digital files involved overt violence or particularly lurid conduct. The jury considered evidence with far greater inflammatory potential, including testimony Williams violently beat his young victims, Williams threatened to kill his victims while holding a semi-automatic rifle against their bodies, Williams stuffed a bound DR into the trunk of his car threatened to kill her as she screamed for her life, Williams had sex with his victims while they were children, Williams forced DL and GRL to have abortions after he impregnated them, Williams violently beat TL and DR while they were pregnant, Williams starved KC until she fell into a diabetic

coma, Williams forced RC to have multiple unwanted plastic surgeries so he could charge more for her as a prostitute, and a prostitution client violently raped KC (DE:292:221-27, 305; DE:293:201, 266-84, 328-35; DE:294:38-40; DE:295:95-99, 150, 157-58, 176-90; DE:296:20, 58-61, 91-109; DE:297:121-37, 155-69). The jury also saw over 150 pages of Backpage advertisements depicting the victims in provocative poses in lingerie (GX2). In addition, the court screened the jury during *voir dire* to ensure they would not be prejudiced by explicit images (DE:290:140; DE:291:17-25, 91-92).

Finally, any error in admitting the digital files was harmless. *See United States v. Lehder-Rivas*, 955 F.2d 1510, 1518 (11th Cir. 1992) (holding erroneous admission of evidence under Rule 403 harmless, because evidence not a central focus of trial and "described actions that were trivial in comparison to some of [the defendant's] most egregious conduct"); *United States v. Hands*, 184 F.3d 1322, 1329 (11th Cir. 1999) (explaining error is harmless if it "had no substantial influence on the outcome and sufficient evidence uninfected by error supports the verdict," which is determined "by weighing the record as a whole, examining the facts, the trial context of the error, and the prejudice created thereby as juxtaposed against the strength of the evidence of defendant's guilt"). Despite their probative value, the digital files were not central to the Government's case, not all of the videos were played for the jury during the trial, the digital files were only briefly referenced during six

sentences of the Government's 75-minute closing argument, and, as is noted above, the digital files were not the most egregious conduct committed by Williams (DE:300:66, 79, 81). In contrast, Williams extensively cross-examined the victims about the digital files and, in closing argument, devoted over 24 sentences to describing the videos and implored the jury to watch them as evidence he did not coerce his victims (DE:294:112-14, 198-99; DE:295:249-50, 276-78; DE:296:200-01; DE:300:137-39, 147-48).

Further, the digital files comprised only a small subset of the abundant evidence supporting Williams' convictions for sex trafficking DL, GRL, and DR. Both DL and GRL testified they prostituted and gave Williams all their earnings *only* because they were terrified that, if they did not, Williams, who controlled every aspect of their lives and confined them to his home while he physically, emotionally, and sexually abused them, would harm or kill them (DE:295:93-101, 123, 148, 164-65, 175-87, 190; DE:296:31-41, 51, 76, 91-109). As is described above, there was ample evidence, in addition to the digital files, Williams knowingly recruited DR to be a child prostitute and then coerced her to continue prostituting as an adult.

III. The Court Did Not Abuse Its Discretion by Declining to Instruct the Jury Consent Is a Defense to Sex Trafficking by Force, Fraud, or Coercion.

After the defense rested, the court partially adopted a proposed instruction by the Government, which explicitly instructed the jury that, on the sex trafficking

counts, "the Government is not required to prove that the Defendant actually caused the victim to engage in a commercial sex act." This instruction was in addition to the court's grammatically subtle instruction that the Government had to prove "force, threats of force, fraud, or coercion, or any combination of such means, *would* be used to cause such a person to engage in a commercial sex act" (DE:143; DE:298:50 (emphasis added)). After that ruling, Williams, for the first time, requested, for the counts charging sex trafficking by force, fraud, or coercion (Counts 2-4, 6-8, 10), the court instruct the jury that "consent or voluntary participation of an adult is a defense, because an adult can legally consent to commercial sex" (DE:298:53). The Government explained that was not an accurate statement of law, noting §1591 criminalizes the intent to coerce another to engage in a commercial sex act and the completion of the sex act, whether consensual or not, is not an element of the crime (DE:298:53-55). The court declined to give Williams' proposed instruction, explaining it was unnecessary because the occurrence of a commercial sex act is not an element of the crime (DE:298:54-56).

Accordingly, the court instructed the jury, for the adult victims, the Government had to prove (1) Williams "knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained by any means" the victim; and (2) Williams "did so knowing or in reckless disregard of the fact that means of force, threats of force, fraud, coercion, or any combination of such means would be used

to cause the person to engage in a commercial sex act," specifying "[t]he Government is not required to prove that the Defendant actually caused the victim to engage in a commercial sex act" (DE:300:16-35). The jury convicted Williams of Counts 2, 4 and 10, and acquitted him of Counts 3 and 6-8. On appeal, Williams challenges his convictions on Counts 2, 4 and 10, vaguely arguing, without any supporting citations, that the occurrence of a consensual commercial sex act is a defense to sex trafficking by force, fraud, or coercion (Br.:59). That, however, is not the law and a victim's eventual perceived willingness if she does commit the commercial sex act is not a defense to sex trafficking by force, fraud, or coercion.

A court will give a proposed "theory of defense" jury instruction only if "(1) the requested instruction was a correct statement of the law, (2) its subject matter was not substantially covered by other instructions, and (3) its subject matter dealt with an issue in the trial court that was so important that failure to give it seriously impaired the defendant's ability to defend himself." *United States v. Jordan*, 582 F.3d 1239, 1247-48 (11th Cir. 2009). Thus, if the proposed instruction "is not a legally cognizable defense" or "merely emphasizes a certain phase of the evidence," a court does not abuse its discretion in declining to give it. *United States v. Blanton*, 793 F.2d 1553, 1561 (11th Cir. 1986).

As is evident from the lack of citations in Williams' brief, this Court has never held that consent to performing a commercial sex act is a defense to sex trafficking by force, fraud, or coercion. There are multiple reasons why.

First, that instruction is not a correct statement of law, because the commission of the commercial sex act, whether consensual or not, is not an element of sex trafficking. Because the commercial sex act is not an element of the crime, a victim's ultimate commission of that act without resistance is not a defense.

Specifically, §1591(a) prohibits a defendant from knowingly recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing, or soliciting a victim if the defendant knew or was in reckless disregard of the fact that "means of force, threats of force, fraud, or coercion *will* be used to cause the person to engage in a commercial sex act." 18 U.S.C. §1591(a) (emphasis added). Because the statute uses the future, not past, tense – *will be used to cause* as opposed to *caused* – the occurrence of the commercial sex act is not an element. As this Court explained "to be criminally liable under §1591 . . . a defendant need only put the victim in a position where a sex act *could* occur, regardless of whether a sex act eventually *did* occur." *Blake*, 868 F.3d at 977; *see also United States v. Weise*, 606 F. App'x 981, 988 (11th Cir. 2015) ("[T]o preserve the meaning of the future-tense verbs in the statute, this Court must read the statute to mean that completion of a victim's sex act is not necessary to a conviction."); *United States v. Wearing*,

865 F.3d 553, 556 (7th Cir. 2017) ("Congress chose the *future* tense – a choice that is inconsistent with the notion that a commercial sex act must already have happened before a violation can be shown."). Accordingly, §1591 provides that "the completion of a sex act [is] a harm distinct from the process of exploitation that leads up to such an act," *Weise*, 606 F. App'x at 988, and the Government does not need to prove the commercial sex act occurred or, if it did, the defendant's coercion was effective and caused the victim to commit that act.

To that end, this Court specifically held the future-tense "will be caused" language in §1591, which applies to both sex trafficking of a minor and sex trafficking by force, fraud and coercion, does not require the victim to complete the commercial sex act. *Mozie*, 752 F.3d at 1286 (holding defendant violated §1591 when he coerced victims to engage in commercial sex acts by giving them business cards and encouraging them to fill out applications to work as prostitutes, even though they declined his offer); *see also United States v. Willoughby*, 742 F.3d 229, 241 (6th Cir. 2014) (noting every court to address the issue has held completion of commercial sex act is not an element of §1591). As the Ninth Circuit aptly explained, in upholding a conviction for sex trafficking by coercion,

> What the statute means to describe, and does describe awkwardly, is a state of mind in which the knower is familiar with a pattern of conduct. . . . When an act of Congress requires knowledge of a future action, it does not require knowledge in the *sense* of certainty as to a future

> act. What the statute requires is that the defendant know in the sense of being aware of an established *modus operandi* that will in the future cause a person to engage in prostitution.

United States v. Todd, 627 F.3d 329, 334 (9th Cir. 2010). Simply put, the relevant intent for this crime is the defendant's intent to persuade his victims and it does not matter whether his victims needed to be or actually were persuaded.

Further, to the extent a commercial sex act does occur, consent is not a defense requiring a separate jury instruction, because consent and force, fraud, and coercion are opposing, mutually exclusive factual determinations. By instructing the jury it had to find Williams coerced his adult victims with the intent they engage prostitution, the court was, conversely, instructing the jury that, if there was no coercion – meaning the victims engaged in commercial sex acts completely of their own volition and Williams did nothing to encourage them – he did not commit sex trafficking. To that end, there was no abuse of discretion in rejecting Williams' proposed consent instruction, because it merely emphasized a certain phase of the evidence and was substantially covered by the instruction requiring the jury to find he knew or recklessly disregarded the fact that the force, threats of force, or coercion would be used to cause his victims to engage in commercial sex acts.

Put conversely, once a defendant imposes force, fraud, or coercion, he has removed the victim's ability to act out of her own volition in engaging in the

commercial sex act. Indeed, this Court has rejected the proposition that §1591 does not "apply to willingly-recruited prostitutes," explaining the statutory text makes it clear it applies beyond women who are forced into sex slavery and, instead, is focused on the defendant's intent. *United States v. Townsend*, 521 F. App'x 904, 906 (11th Cir. 2013). The victims' mindsets – including how easily persuaded they are by the coercion or how willing they are to prostitute – is not an element of sex trafficking. Further, the mental manipulation of victims is so prevalent in sex trafficking, it would be ludicrous to make the victim's mental state an element of the crime. Where the choice facing the victim is to engage in prostitution or suffer physical abuse, homelessness, and starvation, there can never be actual consent.

In addition, the fact the court instructed the jury that consent is not a defense to sex trafficking of a minor does not, as Williams contends, implicitly mean that consent is a defense to adult sex trafficking. Section 1591 criminalizes two different forms of sex trafficking: (1) sex trafficking of all children and (2) sex trafficking of adults only if force, fraud, or coercion is used with the intent of the adult will be caused to engage in a commercial sex act. *See United States v. Evans*, 476 F.3d 1176, 1179 n.1 (11th Cir. 2007) ("Section 1591['s] . . . reach is limited to sex trafficking that involves children or is accomplished by force, fraud, or coercion."); *see also Todd*, 627 F.3d at 331 ("Subtitled 'Sex trafficking of children or by force, fraud, or coercion,' the law strikes at two particularly vicious permutations of commercialized

sex: at the exploitation of minors in the business of selling sex and at the use of criminal means to produce the product being sold."). The difference between the two subsections is that any time a defendant "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits" a child knowing that child will engage in a commercial sex act, even if he does nothing to encourage that act, he commits sex trafficking.

For example, a defendant is guilty of child sex trafficking even if the child approaches him, states she wants to prostitute, choose to prostitute without any encouragement from him, and he harbors her or otherwise assists her efforts to prostitute. In contrast, if that prostitute was an adult, the defendant would not violated §1591 under those facts, but, instead, would violate §1591 only if, in addition, he took some unlawful action with the intent of causing that adult to engage in a commercial sex act. Thus, the jury instruction that consent is not a defense to sex trafficking of a minor serves only to highlight the difference between the elements of the crimes of sex trafficking of a minor and sex trafficking by force, fraud, and coercion. *See United States v. Wardlow*, 666 F. App'x 861, 864 (11th Cir. 2016) (explaining jury instruction stating consent is not a defense to sex trafficking of a minor emphasizes aiding in a child's commission of a commercial sex act is always a crime).

Finally, even if the court did abuse its discretion in declining Williams' proposed instruction, any error was harmless because it "did not influence, or had by very slight effect" on the jury's verdict. *Ross v. United States*, 289 F.3d 677, 683-84 (11th Cir. 2002); *United States v. McGarity*, 669 F.3d 1218, 1249 (11th Cir. 2012) (holding failure to issue theory-of-defense instruction harmless). The jury convicted Williams of violating §1591 by sex trafficking DL, GRL and DR by coercion, and there was overwhelming evidence those victims repeatedly engaged in non-consensual commercial sex while under Williams' control. DL and GRL testified they prostituted only because they were terrified Williams would hurt or kill them if they did not (DE:295:95-100, 164-65, 175, 190; DE:296:31-41, 48-51). And, with respect to DR, the other victims all testified Williams violently beat DR if she did not bring home enough money from prostituting, emotionally abused her, kept digital files depicting her engaged in sexual conduct, branded her with his tattoo, and controlled and monitored her every movement (DE:292:228, 260, 274-81; DE:293:176-80, 201, 213, 229-30, 251-52, 273-76, 344, 350; DE:295:105-17, 185-88; DE:296:43, 47, 52, 109). Accordingly, even if the jury had received the proposed consent instruction, it would not have changed the outcome because the evidence demonstrated DL, GRL, and DR were not engaging in consensual commercial sex acts and Williams had coerced them. In addition, as is clear from his opening and closing arguments and the jury's acquittals on Counts 3 and 6-8, Williams

successfully argued, using the given jury instructions, that he did not coerce TL, RC, and KC, because they were willing prostitutes who used him as their manager (DE:291:145, 150, 155-57; DE:300:88, 91, 93-100, 114, 138, 151-52).

IV. Williams' Sentence Is Substantively Reasonable.

A. Sentencing Facts

Williams' presentence investigation report ("PSI") calculated a total offense level of 43 based upon his egregious conduct (PSI ¶¶97-127). It enhanced his base offense level of 30 by 13, finding his offense conduct involved aggravated sexual assault, victim injury, computer use, obstruction of justice, and three victims, and he was a child sex offender (*id.*). The PSI then detailed Williams' criminal history, which involved convictions for beating his pregnant girlfriend, imprisoning women, and transporting prostitutes, as well as arrests for child prostitution and living on prostitution earnings (PSI ¶¶129-47). When the PSI combined Williams' criminal history category of I with his total offense level of 43, a guidelines range of life imprisonment resulted (PSI ¶175).

Williams objected to the PSI's facts, maintaining his innocence, and requested a downwardly-varied sentence, contending sex trafficking is not a particularly serious offense and is over-punished by the guidelines (DE:180; DE:193; DE:196). The Government explained life imprisonment was appropriate for Williams, reminding the court that Williams was an unremorseful recidivist who, for over 13

years, manipulated, violently assaulted, and sexually exploited vulnerable young women (DE:200).

TL, DL, GRL, and RC filed victim impact statements, requesting Williams serve life imprisonment (DE:201). TL stated she spent years "locked away in a box with Mr. Williams holding the key" and endured "beatings, thoughts of suicide, uncontrollable cries, long nights on cold tiled floors, months of isolation, shame, disgust, self-blame, worthlessness, mental and emotional abuse" (DE:201). DL stated "16 to 21 these were the worst years of my life," because "Williams controlled everything," hurt her, ended her education, estranged her from her family, and destroyed her future (DE:201). GRL stated Williams was "a literal nightmare" (DE:201). RC stated Williams abused her, stole seven years from her, ended her education, estranged her from her family, and traumatized her (DE:303:23-24).

The court held two sentencing hearings, calculating Williams had a guidelines range of life imprisonment (DE:303:10). Williams requested a 20-year sentence, asserting his victims were liars who prostituted to support shopping addictions and asserting the Government manipulated the victims into lying about him (DE:303:11-19, 42, 51-63). The Government responded that Williams was a destructive and terrifying criminal who brutally assaulted women and forced them to prostitute so he did not have to work (DE:303:20-40). After stating it considered 18 U.S.C. §3553(a), the court sentenced Williams to life imprisonment on his five sex-

trafficking convictions and 240 months' imprisonment on his obstruction-of-justice conviction, all to run concurrently (DE:303:63). The court explained Williams was an undeterred recidivist who "subjected his victims to heinous acts of physical abuse, psychological control, and forced prostitution for many years. He is convicted of extremely serious crimes, with multiple victims, who will continue to be affected by Mr. Williams's crimes for the duration of their lives" (DE:303:45-46).

B. Argument

Williams contends his guidelines-range sentence is unreasonably high, arguing he was not a particularly heinous sex trafficker and the guidelines over-represented the severity of his offense conduct. That argument is unconvincing, and life imprisonment is certainly reasonable for a defendant who terrorized, violently attacked, and exploited multiple vulnerable children and young women for over 13 years so that he could live in large homes, drive luxury cars, wear fancy sneakers, and have his every demand met.

Williams bears the burden of demonstrating his sentence is substantively unreasonable, *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010), and this Court will vacate his sentence only if it is "left with the definite and firm conviction" the court "committed a clear error of judgment in weighing the §3553(a) factors." *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010). The §3553(a) factors include the offense's nature and circumstances; the need for the sentence to reflect

the seriousness of the offense, promote respect for the law, and provide just punishment; the need for the sentence to afford adequate deterrence; the need to protect the public; the Sentencing Guidelines range; and the need to avoid unwanted sentencing disparities. 18 U.S.C. §3553(a). In weighing the factors, the court can attach greater weight to one over others. *United States v. Overstreet*, 713 F.3d 627, 638 (11th Cir. 2013).

While this Court does not automatically presume a sentence within the guideline range is reasonable, it ordinarily expects one to be. *United States v. Sarras*, 575 F.3d 1191, 1219 (11th Cir. 2009) (noting this Court has never held a within-guidelines sentence substantively unreasonable). Williams' guidelines sentence is certainly reasonable, and it is justified by multiple §3553(a) factors.

First, the horrific circumstances of Williams' offense and need to protect the public support a life imprisonment sentence. Williams specifically targeted vulnerable teenaged girls, many of them still children who he spotted alone in dangerous neighborhoods, and enticed them to move into his home by feigning romantic interest in them and promising them an extravagant lifestyle. But, once Williams got his victims through the door of his house of horrors, he took their identification documents, brutally assaulted them, threatened to kill them, isolated them from their families, forced them to drop out of school, branded their bodies with his name, and turned them into his tortured slaves who had to constantly

prostitute to fund an extravagant lifestyle that only he led. The victims could not eat, sleep, or leave Williams's presence without his permission, and he kept them under constant surveillance while he had semi-automatic firearms, a taster, a baton, and folding knives at the ready. Whenever he impregnated his young victims, Williams sent them alone to have abortions and then demanded they resume sexual activity within days. Indeed, to earn enough money to satisfy Williams, his victims usually prostituted with 20 different men every night with rarely a night off, giving him every penny they earned. Williams perpetrated that heinous pattern of abuse for over 13 years. Contrary to what Williams contends, it is not "absurd" that conduct earned him the highest possible offense level under the Guidelines.

Second, Williams is an unrepentant recidivist who has shown no remorse and, instead, continues to manipulate and blame his victims. *See Flanders*, 752 F.3d at 1342 (explaining that a first conviction is not the same as being a first-time offender where the sex trafficking scheme took place over a number of years and involved multiple victims). Before beginning the instant long-running crime, Williams victimized another child, beginning a relationship with a 13-year-old when he was 17 years old, impregnating her twice while she was a child, physically abusing her, and never providing any financial support while she worked two jobs (PSI ¶155). The police repeatedly arrested Williams for prostitution-related offenses while he was with the victims, yet he never ceased his conduct. Instead, he demanded his

victims never speak to law enforcement and took other evasive maneuvers (DE:292:313; DE:293:240; DE:296:25; DE:297:165). After his arrest in this case, Williams lied to law enforcement, contending the victims were lying and RC's mother was seeking revenge against him (GX69). While he was detained pre-trial, Williams obstructed justice by contacting TL to seek her support, by repeatedly contacting DR after telling his cellmate he was worried she would testify against him, and by asking TL and his cellmate to convince RC and GRL to sign affidavits recanting their statements against him (DE:292:311-15; DE:296:253, 262-68, 302). Even at sentencing, Williams showed no remorse, contending his victims were liars who prostituted because they liked shopping and contending he was the victim of a nefarious Government plot (DE:303:51-63).

Third, the need to deter sex trafficking supports a life imprisonment sentence. As this Court explained, "sex trafficking by coercion is an abhorrent crime, [and] so is child sex trafficking." *Blake*, 868 F.3d at 969. "Sexual crimes against minors cause substantial and long-lasting harm," *Mozie*, 752 F.3d at 1289, and "are among the most egregious and despicable of societal and criminal offenses," *Sarras*, 575 F.3d at 1220. Indeed, this Court has sentenced numerous sex traffickers, many of whom committed crimes far less egregious than Williams, to life imprisonment. *See e.g.*, *Mozie*, 752 F.3d at 1289 (noting this Court has "repeatedly upheld severe sentences" in sex trafficking cases and holding life imprisonment substantively reasonable for

sex trafficker who recruited minors to prostitute); *United States v. Whyte*, 928 F.3d 1317, 1338 (11th Cir. 2019) (noting sex traffickers who commit crimes of much shorter duration than Williams "received life in prison"); *United States v. McKinley*, 647 F. App'x 957, 967 (11th Cir. 2016) (holding life imprisonment substantively reasonable for sex trafficker who kidnapped and coerced one victim into prostitution); *United States v. Williams*, 564 F. App'x 568, 577 (11th Cir. 2014) (holding life imprisonment substantively reasonable where defendant trafficked five minors for nine months by coercing them to prostitute and give him their earnings).

There are very few people who deserve greater punishment than Williams, and he certainly has not established his life imprisonment sentence is substantively unreasonable.

V. The Court Did Not Clearly Err in Calculating Restitution.

A. Restitution Facts

The Government asked the court to award $773,600 in restitution to DL, GRL, and DR, explaining, under the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. §1593(a), Williams must repay the prostitution earnings he took from his victims (DE:267; DE:274). Based on DL's trial testimony, the Government estimated Williams took $522,600 from her (DE:267:8-9). It explained DL testified she prostituted nearly every day for five years, she earned at least $500 a day, and Williams took all her earnings, which totaled $780,000 and which the Government

reduced by one-third to ensure a conservative estimate (DE:267:8-9). Based on GRL's trial testimony, the Government estimated Williams took $30,000 from her, explaining GRL testified she prostituted five days a week for three months, she earned at least $500 a day, and Williams took all her earnings (DE:267:9-10). Based on the testimony of DR's co-victims and the undercover officers who solicited her for prostitution, the Government estimated Williams took $221,000 from her (DE:267:10-11). It explained the testimony, at its most conservative, demonstrated DR prostituted five days a week for five years, she earned $200 a day, and Williams took all her earnings, which totaled $442,000 and which the Government reduced by half to ensure a conservative estimate (DE:267:10-11). Williams challenged those estimates, arguing, because DR renounced restitution, he could keep the prostitution earnings he took from her and arguing his restitution amount should be offset by the living expenses he expended on his victims (DE:270).

The court held a restitution hearing, during which Williams' investigator testified he communicated with DR, asking her if she wanted to seek restitution, and she stated "she really didn't want anything else to do with this case" (DE:288:6-10). Williams' investigator stated DR sent him an email stating "I do not intend on seeking restitution against Alston Williams," but he revealed she never executed the sworn statement he sent to her stating she renounced her restitution payments (DE:288:6-10). The investigator testified he never told DR the amount of restitution

the Government was seeking on her behalf and he never had an in-person discussion with her (DE:288:6-12). Based on that testimony, the court held DR did not renounce restitution (DE:276:6). Alternatively, the court held, even if DR had renounced restitution, it had to be awarded because the TVPA is mandatory and not conditioned on victim assent (DE:276:6-7). The court, after explaining no law suggests a trafficker's restitution order must be offset by any expenses he expends on his victims, accepted the Government's estimates and ordered Williams to pay $773,600 to DL, GRL, and DR (DE:276; DE:288; DE308).

B. Argument

Under the TVPA, if a defendant is convicted of a trafficking offense, "the court *shall* order restitution" in "the full amount of the victim's losses," which is "the gross income or value to the defendant of the victim's services or labor" without regard to the victim's actual loss. 18 U.S.C. §1593; *see United States v. Kuo*, 620 F.3d 1158, 1164-66 (9th Cir. 2010) (explaining the TVPA differs from the Mandatory Victims Restitution Act, 18 U.S.C. §3663, because §3663 limits restitution to a victim's actual loss, whereas the TVPA defines restitution more broadly as the defendant's ill-gotten gains.). The TVPA created one of the most expansive mandatory restitution schemes because

> full restitution is critical to restoring [the trafficking] victim[s]' dignity, helping them gain power back from their exploiters who took advantage of their hope for a

> better life. [It] attack[s] the greed of the trafficker and the idea of a human being as a commodity. It is a way to ensure that victims receive access to justice.

United States v. Sabhani, 599 F.3d 215, 259-60 (2d Cir. 2010).

Thus, in a sex trafficking case, the defendant's restitution amount must include "any money that the victim[s] earned while prostituting for the defendant," *Baston*, 818 F.3d at 666, and this Court has repeatedly affirmed restitution amounts calculated by multiplying the amount a victim earned prostituting by the amount of time she prostituted less any prostitution earnings she kept. *See, e.g., United States v. Cortes-Castro*, 511 F. App'x 942, 947 (11th Cir. 2013) (affirming $1.2 million restitution amount in sex trafficking case because it was "mandated by statute"); *United States v. Robinson*, 508 F. App'x 867, 871 (11th Cir. 2013) (affirming restitution amount for sex trafficking victim calculated using testimony about "the amount charged for [the victim's] services and the amount of time she worked for the defendant").

The restitution amount need only be a "reasonable estimate" of the prostitution earnings Williams took from his victims, demonstrated by a preponderance of the evidence, because, due to his lack of financial records, it is impossible to determine the precise amount Williams took from his victims. *United States v. Futrell*, 209 F.3d 1286, 1291-92 (11th Cir. 2000) (holding, where "it would be impossible to determine the precise amount of restitution because there are no

records which reflect" the loss, the court "did not abuse its discretion by accepting a reasonable estimate" of the loss); *see also* 18 U.S.C. §1593(b)(2) (directing TVPA restitution orders be issued in accordance with §3664, which states the restitution amount must be proven by a preponderance of the evidence); *United States v. Palmer*, 643 F.3d 1060, 1067-68 (8th Cir. 2011) (affirming award of $200,000 for sex trafficking victim and noting "the district court was only required to make a reasonable estimate"). In determining the restitution amount, the court may rely on any credible statements, including trial testimony and hearsay that bears "minimal indicia of reliability." *United States v. Bourne*, 130 F.3d 1444, 1447 (11th Cir. 1997); *United States v. Saunders*, 318 F.3d 1257, 1271 n. 22 (11th Cir.2003).

The court did not clearly err in making a reasonable estimate of Williams' restitution amount. Just as this Court instructed it to, the court used trial evidence it expressly found credible to multiply the amount of prostitution earnings Williams took from each victim every day she prostituted by the number of days she prostituted. The court based DL's $522,600 restitution award on her credible testimony that Williams took $500 to $1000 from her every day she prostituted and she prostituted twice a week for the first year and every day for the next four years (DE:276:4-5; DE:295:99-100, 121-24, 148, 193). Indeed, that calculation yielded a restitution amount of $780,000, but the court imposed a more conservative amount of $522,600 (DE:276:4-5). The court based GRL's $30,000 restitution award on her

credible testimony that Williams took $500 from her every day she prostituted and she prostituted five nights a week for three months (DE:276:5; DE:296:31-41. 152-56). Finally, the court based DR's $221,000 restitution award on credible testimony that DR gave Williams at least $200 every day she prostituted and she prostituted five days a week for five years (DE:276:8-9; DE:292:277; DE:293:106-07, 220; DE:295:105-06). Indeed, that calculation yielded a restitution amount of $442,000, but the court imposed a more conservative amount of $221,000 (DE:276:8-9).

Nor did the court clearly err in declining to offset the restitution amount by any living expenses Williams paid for his victims. This argument is nonsensical given that Williams forced his victims, under threat of death, to live in his home and he insisted on controlling everything they ate and wore. *See Cortes-Castro*, 511 F. App'x at 947 (explaining any argument a restitution award to a trafficking victim should be reduced because it rewards them "is preposterous given that [the] victims were enslaved and forced to prostitute"). Williams is correct that, in *Baston*, this Court affirmed a sex trafficking restitution award that was offset by the living expenses the trafficker paid for his victims. 818 F.3d at 665. But, that case did not hold a court should, or even could, impose such an offset, because neither the defendant nor the Government challenged the offset on appeal. *Id.* Instead, all *Baston* ruled upon was whether the court clearly erred by using trial testimony to

calculate restitution, holding it did not. *Id.* Thus, *Baston* yields no support to Williams' argument.

Further, even if the law required the court to reimburse a trafficker for the expenses he incurred in holding his victims hostage, Williams did not carry his burden of proving his expenditures by a preponderance of the evidence. *United States v. Bane*, 720 F.3d 818, 828-29 (11th Cir. 2013) (holding defendant must offer evidence to prove any restitution offset he seeks). Williams did nothing more than baldly stated he spent $500 per week on each victim, and he provided no evidence, not even a sworn statement or a single receipt, in support of that number. That is certainly not enough.

Finally, Williams' argument, which is based on a non-binding case addressing a different restitution statute, that he can keep the prostitution earnings he took from DR because she has renounced restitution is unavailing. The court did not clearly err in determining DR had not renounced restitution and, even if she had, the TVPA required the court to order Williams to pay her restitution. Indeed, even under the improvidently decided and generally rejected Tenth Circuit case, *United States v. Speakman*, 594 F.3d 1165 (10th Cir. 2010), upon which Williams relies, he is obliged to pay restitution to DR.[13] *Speakman* holds a defendant cannot be ordered

[13] While the Tenth Circuit made certain restitution orders under the §3663 conditional on victim assent, the Second, Fifth, Seventh, and Ninth Circuits have

to pay restitution under the Mandatory Victims Restitution Act, 18 U.S.C. §3663 (the "MVRA"), if his victim expressly and clearly renounces the restitution. 594 F.3d at 1175-77. In that case, the victim, who was the defendant's wife, "specifically disclaimed her interest in receiving the money" awarded to her, and the court noted, if the victim had not issued a "specific" and "clear statement" rejecting the restitution, it would have been statutorily bound to order the defendant to pay restitution to her. 594 F.3d at 1174, 1178-79.

In this case, unlike *Speakman*, DR did not make a "specific and clear" renunciation of the restitution she is owed. When DR told Williams' investigator she "really didn't want anything else to do with this case," he had not told her she was potentially rejecting a $221,000 payment that the Government was seeking on her behalf (DE:288:8-12). Thus, because DR did not know the amount she was eligible to receive, she never made a knowing and specific renunciation of that amount. Further, DR never executed the sworn statement renouncing restitution that Williams drafted for her (DE:288:6-12). That is not enough to dispose of the TVPA's clear mandate.

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rejected that holding. *United States v. Hankins*, 858 F.3d 1273, 1275 (9th Cir. 2017); *United States v. Ridgeway*, 489 F.3d 732, 738 (5th Cir. 2007); *United States v. Johnson*, 378 F.3d 230, 245 (2d Cir. 2004); *United States v. Pawlinski*, 374 F.3d 536, 537 (7th Cir. 2004).

Further, even if DR had renounced restitution, the court still would have been obliged to order it. The central provision of the TVPA requires restitution by stating "the court *shall* order restitution," provides no exceptions, and expressly prohibits interpretations of other restitution laws, including the MVRA, to create any exceptions. 18 U.S.C. §1593. Thus, the TVPA's statutory language is clear that victim assent is not required for restitution and, conversely, that victim renunciation does not create an exception to the restitution requirement.

As Williams notes, the TVPA directs restitution orders "shall be issued" in accordance with 18 U.S.C. §3664, and §3664 states "no victim shall be required to participate in any phase of a restitution order" and "a victim may at any time assign [her] interest in restitution payments to the Crime Victims Fund." 18 U.S.C. §1593(b)(2); 18 U.S.C. § 3664(g). But, Williams is mistaken in believing those provisions somehow create an exception to the TVPA's mandatory restitution. Instead, §3664(g) merely reiterates that restitution is not predicated on the victim's participation or assent and the victim can donate her restitution payments if she does not want them. Thus, the restitution statutes do nothing more than uphold the central legal principle that "[v]ictims cannot control the applicability of a penal statute." *United States v. Hankins*, 858 F.3d 858 F.3d 1273, 1280 (9th Cir. 2017)

This conclusion makes eminent sense in the context of traffickers who often traumatize and brainwash their victims. If this Court adopts the rule Williams

suggests, there is a serious risk defendants can and will coerce their still-terrified victims to renounce restitution. Indeed, in the present case, it was Williams who repeatedly called DR from prison to ensure she would not testify, who located DR after sentencing, who had his investigator contact her about restitution while providing her with minimal information, and who reported she renounced restitution.

In line with that reasoning, the Second, Fifth, Seventh, and Ninth Circuits have held, with respect to the MVRA, that where, as in the TVPA, Congress mandates restitution be paid to victims of particular crimes, the courts must impose that restitution even if the victim renounces it.[14] *See Hankins*, 858 F.3d at 1278; *United States v. Ridgeway*, 489 F.3d 732, 738 (5th Cir. 2007); *United States v. Johnson*, 378 F.3d 230, 245 (2d Cir. 2004); *United States v. Pawlinski*, 374 F.3d 536, 540-41 (7th Cir. 2004). The Second Circuit correctly explained a victim's renunciation cannot absolve a defendant of his restitution obligation because "[t]o hold otherwise would be inconsistent with the . . . statutory scheme of mandatory restitution, and it would undermine the power of the criminal justice system to punish defendants, where appropriate, through orders of restitution." *Johnson*, 378 F.3d at 244.

[14] The MVRA contains similar language to the TVPA, including the use of the verb "shall" in relation to the court's obligation to award restitution. *Compare* 18 U.S.C. §1593 *with* 18 U.S.C. §3663A.

Further, the Supreme Court and this Court have rejected the notion that a court can order restitution only to compensate a victim and not for punitive purposes. The Supreme Court has repeatedly explained restitution is punitive and compensatory, stating "[a]lthough restitution does resemble a judgment for the benefit of the victim, the context in which it is imposed undermines that conclusion. The victim has no control over the amount of restitution awarded or over the decision to impose restitution." *Kelly v. Robinson*, 479 U.S. 36, 52 (1986); *Paquantino v. United States*, 544 U.S. 349, 365 (2005) ("The purpose of awarding restitution" under the MVRA "is . . . to mete out appropriate criminal punishment."); *Paroline v. United States*, 572 U.S. 434, 456 (2014) (stating while "the primary goal of restitution is remedial or compensatory," restitution "also serves punitive purposes").[15] In line with the Supreme Court, this Court has held restitution is "penal, rather than compensatory." *United States v. Johnson*, 983 F.2d 216, 220 (11th Cir. 1993).

Simply put, the TVPA is clear Williams must repay the prostitution earnings he took from his victims as part of his criminal sentence. Accordingly, the court did not clearly err in ordering Williams pay restitution in the estimated amount of the prostitution earnings he took from DL, GRL and DR.

[15] After *Paroline*, the Tenth Circuit has questioned the continuing validity of *Speakman*, which was largely premised on the principle that restitution cannot be punitive. *United States v. Ferdman*, 779 F.3d 1129, 1132 n. 1 (10th Cir. 2015).

Conclusion

For the foregoing reasons, the court's decision should be affirmed.

Respectfully submitted,

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I hereby certify that seven copies of the foregoing Brief for the United States were mailed to the Court of Appeals via Federal Express this 7th day of May, 2020, and that, on the same day, the foregoing brief was filed using CM/ECF and served via CM/ECF on Gail M. Stage, Assistant Federal Public Defender, Attorney for Appellant.

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