

No. 22-14153

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LONNIE DONTAE MITCHELL,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES AS APPELLEE

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

In accordance with Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, the United States certifies that, in addition to those identified in the brief filed by defendant-appellant, the following persons may have an interest in the outcome of this case:

1. Babazadeh, Natasha N., U.S. Department of Justice, Civil Rights Division, counsel for the United States;
2. Clarke, Kristen, U.S. Department of Justice, Civil Rights Division, counsel for the United States; and
3. Flynn, Erin H., U.S. Department of Justice, Civil Rights Division, counsel for the United States.

The United States certifies that no publicly traded company or corporation has an interest in the outcome of this appeal.

s/ Natasha N. Babazadeh  
NATASHA N. BABAZADEH  
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Date: October 13, 2023

## **STATEMENT REGARDING ORAL ARGUMENT**

Defendant-appellant does not request oral argument. The United States agrees that oral argument is unnecessary in this case.

## TABLE OF CONTENTS

	PAGE
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT	
STATEMENT REGARDING ORAL ARGUMENT	
STATEMENT OF JURISDICTION.....	1
STATEMENT OF THE ISSUES.....	2
STATEMENT OF THE CASE.....	3
1. <i>Procedural Background</i> .....	3
2. <i>Mitchell’s Sex Trafficking Scheme</i> .....	5
a. <i>Mitchell Recruited Vulnerable Women</i> .....	6
b. <i>Mitchell Manipulated The Victims’ Drug Addictions</i> .....	8
c. <i>Mitchell Controlled The Victims Through Rules             And Consequences</i> .....	9
d. <i>Mitchell Also Controlled The Victims Through Physical             Violence And Psychological Abuse</i> .....	13
3. <i>Standard Of Review</i> .....	16
SUMMARY OF ARGUMENT .....	17
ARGUMENT	
I    THE DISTRICT COURT PROPERLY EXCLUDED EVIDENCE OF THE VICTIMS’ OTHER SEXUAL BEHAVIOR UNDER RULE 412 .....	19
A. <i>Federal Rule Of Evidence 412</i> .....	19

<b>TABLE OF CONTENTS (continued):</b>	<b>PAGE</b>
<i>B. Mitchell Cannot Show That The District Court’s Decision To Exclude Evidence Of The Victims’ Other Sexual Acts Violated The Constitution.....</i>	20
<b>II THE DISTRICT COURT ACTED WITHIN ITS DISCRETION UNDER RULE 404(B) AND RULE 403 TO ADMIT EVIDENCE OF MITCHELL’S DRUG-DEALING ACTIVITIES.....</b>	<b>27</b>
<i>A. Authority To Admit Evidence Of A Defendant’s Wrongful Acts.....</i>	27
<i>B. Evidence Of Mitchell’s Drug-Dealing Activities Is Inextricably Intertwined With Evidence Of His Sex Trafficking And Not Subject To Rule 404(b) .....</i>	28
<i>C. Evidence Of Mitchell’s Drug-Dealing Activities Is Also Admissibl Under Rule 404(b) To Prove Intent .....</i>	34
<i>D. Any Error In Admitting The Challenged Evidence Was Harmless .....</i>	37
CONCLUSION.....	38
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

## TABLE OF CITATIONS

<b>CASES:</b>	<b>PAGE</b>
<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986).....	17, 21
<i>United States v. Campbell</i> , 49 F.3d 1079 (5th Cir. 1995) .....	34, 36
<i>United States v. Carson</i> , 870 F.3d 584 (7th Cir. 2017), cert. denied, 138 S. Ct. 2011 (2018).....	21, 33
* <i>United States v. Culver</i> , 598 F.3d 740 (11th Cir. 2010).....	19-21, 24
<i>United States v. Diaz</i> , 26 F.3d 1533 (11th Cir. 1994) .....	21
* <i>United States v. Edouard</i> , 485 F.3d 1324 (11th Cir. 2007).....	28, 32, 35
<i>United States v. Frazier</i> , 387 F.3d 1244 (11th Cir. 2004) (en banc), cert. denied, 544 U.S. 1063 (2005).....	16, 20
<i>United States v. Gemma</i> , 818 F.3d 23 (1st Cir.), cert. denied, 580 U.S. 975 (2016).....	21
<i>United States v. Guzman</i> , 167 F.3d 1350 (11th Cir. 1999) .....	16
<i>United States v. Hands</i> , 184 F.3d 1322 (11th Cir.), corrected by 194 F.3d 1186 (11th Cir. 1999) .....	16
<i>United States v. Harriston</i> , 329 F.3d 779 (11th Cir. 2003).....	37
<i>United States v. Hernandez</i> , 906 F.3d 1367 (11th Cir. 2018) .....	16
<i>United States v. Jeri</i> , 869 F.3d 1247 (11th Cir. 2017).....	20
<i>United States v. Jernigan</i> , 341 F.3d 1273 (11th Cir. 2003).....	35
<i>United States v. Lankford</i> , 955 F.2d 1545 (11th Cir. 1992) .....	17
<i>United States v. Lockhart</i> , 844 F.3d 501 (5th Cir. 2016) .....	21-22

<b>CASES (continued):</b>	<b>PAGE</b>
<i>United States v. Mack</i> , 808 F.3d 1074 (6th Cir. 2015), cert. denied, 577 U.S. 1167 (2016).....	21
<i>United States v. McKinley</i> , 647 F. App'x 957 (11th Cir. 2016).....	33
<i>United States v. Mitchell</i> , No. 22-12084, 2023 WL 3620913 (11th Cir. May 24, 2023).....	5
<i>United States v. Parks</i> , 902 F.3d 805 (8th Cir. 2018) .....	33, 36
<i>United States v. Paulino</i> , 445 F.3d 211 (2d Cir.), cert. denied, 549 U.S. 980 (2006).....	37
<i>United States v. Rivera</i> , 799 F.3d 180 (2d Cir. 2015), cert. denied, 578 U.S. 1015 (2016).....	21
<i>United States v. Roy</i> , 781 F.3d 416 (8th Cir. 2015).....	22
<i>United States v. Sarras</i> , 575 F.3d 1191 (11th Cir. 2009) .....	16, 27
<i>United States v. Sterling</i> , 738 F.3d 228 (11th Cir. 2013), cert. denied, 572 U.S. 1143 (2014).....	35-36
<i>United States v. Valenzuela</i> , 495 F. App'x 817 (9th Cir. 2012).....	22
<i>United States v. Whyte</i> , 928 F.3d 1317 (11th Cir. 2019).....	21, 24
* <i>United States v. Williams</i> , 564 F. App'x 568 (11th Cir.), cert. denied, 574 U.S. 912 (2014).....	21-22, 29, 33, 36
<i>United States v. Zapata</i> , 139 F.3d 1355 (11th Cir. 1998) .....	20
 <b>CONSTITUTION AND STATUTES:</b>	
U.S. Const. Amend. VI .....	20
18 U.S.C. 1591 .....	3

<b>STATUTES (continued):</b>	<b>PAGE</b>
18 U.S.C. 1591(a) .....	29
18 U.S.C. 1591(a)(1).....	35
18 U.S.C. 2422.....	3
18 U.S.C. 3231 .....	1
28 U.S.C. 1291 .....	1

**RULES:**

Fed. R. Crim. P. 52(a).....	37
Fed. R. Evid. 403 .....	28
Fed. R. Evid. 404(b).....	27-28
Fed. R. Evid. 404(b)(2).....	35
Fed. R. Evid. 412(a)(1) .....	19
Fed. R. Evid. 412(a)(2) .....	19
Fed. R. Evid. 412(b)(1)(C).....	19
Rule 412 Advisory Committee Notes, 1994 Amendments .....	19



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BRIEF FOR THE UNITED STATES AS APPELLEE

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**STATEMENT OF JURISDICTION**

This appeal is from a district court’s final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court entered final judgment against defendant Lonnie Dontae Mitchell on December 13, 2022. Doc. 290, at 1.<sup>1</sup> That same day, Mitchell filed a timely notice of appeal from the court’s judgment. Doc. 293. This Court has jurisdiction under 28 U.S.C. 1291.

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<sup>1</sup> Citations to “Doc. \_\_, at \_\_” refer to the documents in the district court record, as numbered on the docket sheet, and page numbers within those documents. “Br. \_\_” refers to page numbers in Mitchell’s opening brief.

## STATEMENT OF THE ISSUES

Defendant-appellant Lonnie Dontae Mitchell profited from a years-long sex trafficking scheme by wielding his power as a drug dealer to cause women struggling with drug addiction to perform commercial sex acts for his financial benefit. Mitchell freely offered or gave his victims unnecessarily high amounts of heroin to manipulate their addictions, and he reinforced his demands by withholding drugs from his victims to induce dope sickness, using violence against them, and humiliating and degrading them in front of family and friends.

A jury convicted Mitchell of ten sex trafficking offenses, including sex trafficking of a minor; sex trafficking by force, fraud, or coercion; and interstate travel for purposes of prostitution. The district court sentenced Mitchell to 720 months' imprisonment on Counts 1 through 7, and 240 months' imprisonment on Counts 8 through 10, to be served concurrently.

Mitchell now raises two questions on appeal:

1. Whether the district court properly applied Federal Rule of Evidence 412 to exclude evidence of the victims' prior acts of prostitution that Mitchell sought to use to show the victims voluntarily engaged in commercial sex acts.

2. Whether the district court properly admitted evidence of Mitchell's drug-dealing activities as inextricably intertwined with evidence of his sex-trafficking scheme or as probative evidence of his intent to commit the charged offenses.

## STATEMENT OF THE CASE

### *1. Procedural Background*

A federal grand jury returned a ten-count superseding indictment charging Mitchell with crimes related to his years-long sex trafficking scheme. See Doc. 55. This indictment contained one count for sex trafficking of a minor—LRE—in violation of 18 U.S.C. 1591 (Count 1); six counts of sex trafficking by force, fraud, or coercion as to five women—LRE, HBB, JNE, BJH, and BTJ—in violation of 18 U.S.C. 1591 (Counts 2-7); and three counts of knowingly recruiting and coercing two women—LRE and BTJ—to travel interstate to engage in prostitution, in violation of 18 U.S.C. 2422 (Counts 8-10). Doc. 55, at 1-6.<sup>2</sup>

Before trial, the government moved to exclude evidence of the victims' other sexual acts under Federal Rule of Evidence 412, arguing that Mitchell could not use that evidence to suggest that the victims "voluntarily prostituted for him under Rule 412." Doc. 29, at 1. The government further contended that the evidence was "irrelevant, unfairly prejudicial, and likely to confuse the jury" under Rules 401 and 403, because the relevant question is whether Mitchell used prohibited means to cause the victims to engage in commercial sex acts. Doc. 29,

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<sup>2</sup> LRE was a minor during portions of Mitchell's criminal conduct and is the identified victim in three counts; BTJ is the identified victim in two counts. In total, there are five victims across the ten counts.

at 1. Separately, the government filed notice of its intent, under Federal Rule of Evidence 404(b), to introduce evidence of, among other things, Mitchell's drug distribution to show that he "used drugs to manipulate [the victims] into engaging in commercial sex acts." Doc. 30, at 3-4.

Mitchell opposed the government's Rule 412 motion, arguing that precluding him from examining evidence of the victims' prior acts of prostitution denied him his right to prepare a complete defense in violation of the Due Process and Confrontation Clauses. Doc. 183, at 1-4. He also objected to the government's Rule 404(b) notice and, as relevant here, moved to exclude evidence of his drug dealing as irrelevant, unfairly prejudicial, confusing to the jury, and wasteful of trial time. Doc. 182, at 2.

The district court granted the government's Rule 412 motion, explaining that "[e]very circuit court that has addressed this issue has held that a victim's prior sexual behavior and sexual predispositions are irrelevant to whether a victim voluntarily participated in commercial sex acts during the time period referenced in an indictment." Doc. 225, at 1-2 (citing cases). The court also denied Mitchell's Rule 404(b) motion to exclude evidence of his drug dealing, agreeing with the government that "this evidence is not character evidence that will be used for propensity, but rather is direct evidence that goes to the elements of the crimes charged." Doc. 225, at 3-4. The court still clarified that it would "curtail any

frequent references to [Mitchell] as a ‘drug dealer’ or ‘drug distributor’” and that Mitchell “may object if he believes the Government has made improper or too frequent references to this evidence or if he wishes for the Court to give a limiting instruction to the jury.” Doc. 225, at 4.<sup>3</sup>

Mitchell proceeded to trial. See Doc. 141. After a five-day trial, the jury convicted on all ten counts. See Doc. 237, at 1-4. The district court sentenced Mitchell to 720 months’ imprisonment on Counts 1 through 7, and 240 months’ imprisonment on Counts 8 through 10, to be served concurrently. Doc. 290, at 3-4. Mitchell timely appealed the judgment of conviction. Doc. 293.

## 2. *Mitchell’s Sex Trafficking Scheme*

Mitchell orchestrated a sex trafficking scheme in which he, as a drug dealer in Montgomery, Alabama, freely offered or gave unnecessarily high amounts of heroin to women struggling with drug addiction. Once these women became dependent on him for shelter, food, and drugs, he demanded that they perform

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<sup>3</sup> Before trial, the court also denied Mitchell’s motion to suppress evidence, including drugs, seized pursuant to a valid search warrant. Doc. 208, at 1-6; see also Doc. 145. This Court recently affirmed, in a separate case stemming from the same investigation, Mitchell’s conviction and sentence for being a felon in possession of a firearm. See *United States v. Mitchell*, No. 22-12084, 2023 WL 3620913, at \*5 (11th Cir. May 24, 2023). In so doing, this Court upheld, among other things, the district court’s decision to permit drug evidence, given the known correlation between drug dealing and weapons, to show Mitchell knowingly possessed the firearm. *Ibid.*

commercial sex acts and turn over all proceeds to him. Mitchell reinforced his demands by withholding drugs, using violence against the victims, often in the presence of the other victims, and humiliating and degrading them in front of family and friends.

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

*a. Mitchell Recruited Vulnerable Women*

Mitchell chose to victimize particularly vulnerable women. Some were homeless and lacked any support, others were already being sexually exploited, and all suffered from drug addiction. Mitchell groomed each victim based on her individual vulnerabilities and his position of power as a drug dealer in the area.

Mitchell met LRE, HBB, and BJH through selling drugs. Doc. 314, at 29-30, 43, 163-164, 215-217; Doc. 316, at 62-64. As LRE's and HBB's local drug dealer, Mitchell quickly learned that others were already sexually exploiting and victimizing both women. See Doc. 314, at 163-165, 174-175, 221. LRE, only a teen at the time, engaged in commercial sex acts on behalf of her mother to earn money to pay for both of their drug addictions (specifically, to cocaine and meth). Doc. 314, at 86-87, 174-175, 218-221. To continue satisfying her drug addiction, LRE began living with and working for Mitchell when she was only 17 years old. Doc. 314, at 31-32, 225-257.

HBB was similarly being controlled and sexually exploited by another person when she met Mitchell. Doc. 314, at 163-164. After her previous trafficker severely beat her, HBB ran away and eventually went to the hotel where Mitchell and BTJ, another of Mitchell's victims, were staying. Doc. 314, at 165. Although HBB had no money on her, Mitchell gave her heroin and agreed to give her more if she did "plays"—the term Mitchell used for commercial sex acts. Doc. 314, at 16, 166; see also Doc. 313, at 19; Doc. 315, at 50.

BJH was also a heroin user and met Mitchell to buy drugs from him. Doc. 314, at 43; Doc. 316, at 63-64. The first time she went alone to buy drugs from Mitchell, he told her to use all the drugs in front of him in the hotel room and would not let her leave the room until she did. Doc. 316, at 65-66. Later, Mitchell began offering BJH heroin for driving LRE and BTJ to dates where they would engage in commercial sex. Doc. 316, at 68-69. BJH also began "selling drugs for him" and was "at his beck and call." Doc. 316, at 70. Eventually, even though BJH had other ways to get Mitchell money, he demanded that she start seeing clients and engaging in commercial sex acts for his financial benefit. Doc. 316, at 81-82.

JNE and BTJ also had drug addictions at the time they met Mitchell; JNE was addicted to meth and heroin and BTJ to meth and Xanax. Doc. 314, at 6-7, 72-74; Doc. 315, at 45. They connected with Mitchell through mutual friends, but

they ultimately sought him out while they were homeless and without any support. Doc. 314, at 7-8, 12, 41, 75-77; Doc. 315, at 46-49. After learning about their circumstances, Mitchell exploited their vulnerabilities and offered to help them. Doc. 314, at 7- 8, 10; see, *e.g.*, Doc. 314, at 12 (Mitchell would send BTJ pictures of money and drugs “to try to get [her] to come with him.”). He provided them shelter, food, and free drugs, before requiring them to engage in commercial sex acts. Doc. 314, at 13-17; Doc. 315, at 47-54.

*b. Mitchell Manipulated The Victims’ Drug Addictions*

Mitchell controlled the amount of heroin he gave to his victims, some of whom were using the drug for their first time, to increase their heroin addictions. Doc. 314, at 18-19, 31, 77-78, 87, 166-167; Doc. 315, at 50-53. When he would first meet them, Mitchell either gave the victims heroin for free, at a discount, or in exchange for running simple errands. See, *e.g.*, Doc. 314, at 13, 30, 166-167, 189, 223; Doc. 315, at 48-53. Doing so allowed Mitchell to increase the victims’ physical dependence on heroin and thus their dependence on him as their source for heroin. Doc. 314, at 19-20, 166-167, 224-225. The victims would do anything to prevent withdrawal symptoms or what they described as getting “dope sick”—that is, experiencing symptoms like sweating, vomiting, having the flu, feeling “depressed” and “like you’re dying,” to name a few. Doc. 314, at 19-20, 166-167,



178, 196, 224; Doc. 315, at 55; Doc. 316, at 73-74. The victims could relieve the symptoms only with more heroin. Doc. 314, at 20, 224.

After increasing their drug dependence, Mitchell would then stop giving or selling heroin to the victims unless they engaged in commercial sex acts and followed his rules for doing so. Doc. 314, at 167, 191, 233-234, 268; Doc. 316, at 73. That manipulation caused the victims to obey Mitchell's rules and engage in the commercial sex acts for fear of dope sickness and withdrawal symptoms. Doc. 314, at 191, 233-234, 268. And when Mitchell would provide the heroin, the victims always received an amount of heroin worth significantly less than the money they had to give him for their commercial sex acts. Doc. 314, at 170, 211; Doc. 315, at 79.

*c. Mitchell Controlled The Victims Through Rules And Consequences*

Mitchell established all the rules for the victims' commercial sex acts and controlled nearly every aspect of the victims' lives.

For commercial sex acts, Mitchell made the victims post advertisements, told them what to include in them, reviewed and approved the advertisements, and set prices for the sex acts. Doc. 314, at 27, 169-171, 225-226, 231; Doc. 315, at

58; Doc. 316, at 81-82.<sup>4</sup> He instructed the victims on what to wear and how to perform the sex acts, and he required them to collect and send him the personal information of the commercial sex customers (called “johns”). Doc. 314, at 27-28, 32-34, 133, 169-171, 231; Doc. 315, at 58; Doc. 316, at 82-83. Mitchell also required the victims to videotape all their “plays” to critique them afterward and controlled the “plays” in real time by watching via FaceTime and sending instructions to the victims based on what he saw. Doc. 314, at 32-34, 232-233; Doc. 315, at 56-59; Doc. 316, at 82-84. Depending on how they performed, Mitchell would give heroin, food, or shelter to his victims or withhold these things from them. Doc. 314, at 22, 38, 58-59, 62, 136, 188, 268; Doc. 315, at 58, 60.

Mitchell also set quotas for how much money the victims had to make and took all the money they earned from the commercial sex acts. Doc. 314, at 18, 24-30, 170, 243; Doc. 315, at 56. As a result, he always had large sums of cash on him. Doc. 314, at 24, 187, 228. He regularly displayed, in person and on social media, cash and luxurious items. Doc. 314, at 140-148, 187, 244-245; Doc. 315, at 168.

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<sup>4</sup> The victims had to post their advertisements on websites like Backpage or Skip the Games, both online platforms used by people to engage in commercial sex acts. Doc. 313, at 16; Doc. 314, at 15, 42, 225.

Mitchell further decided whether, when, and where the victims would travel to, post ads, and see clients. See Doc. 314, at 34, 229-230; Doc. 316, at 89. In addition to acts he demanded in Montgomery County, Alabama, he forced the victims to perform commercial sex acts in Columbus, Georgia, and Panama City, Florida. Doc. 314, at 36, 229-230; see Doc. 315, at 57, 250-254; Doc. 316, at 90-91. Mitchell sometimes travelled with his victims; even when he did not, Mitchell would send someone with them and control how and when the victims received heroin. Doc. 314, at 37-39.

Aside from the commercial sex acts, Mitchell controlled other aspects of the victims' lives. See Doc. 314, at 234-235. Mitchell had to approve all the victims' expenses (gas, hotels, condoms, food, etc.). Doc. 314, at 39-40, 58, 171, 188, 246-247; Doc. 315, at 51, 60. But he refused to pay for the victims' personal hygiene products; they instead resorted to their own devices, including shoplifting. Doc. 314, at 59, 187, 245. Mitchell even moved all the victims into a single residence (on Yarbrough Street) that he put under BTJ's name; he then forced the women to do chores like cleaning the house, taking Mitchell's mother to and from work, and washing the cars. Doc. 314, at 46, 89, 234-235, 252, 262, 268; Doc. 315, at 57. He also made the victims take care of his sister after a car accident, watch his children, and deliver drugs to people coming to buy from him. Doc. 314, at 235.

Mitchell required the victims “to get [his] permission to go anywhere” and “to do anything,” and he did not allow them to leave the residence alone or take their phones with them when they left. Doc. 314, at 171; Doc. 315, at 60; Doc. 316, at 74. He instructed the victims to recruit other women at hotels or when other women came to purchase drugs from him. Doc. 314, at 40, 188-189. Mitchell took and kept (or directed others to take and keep) the victims’ state identification cards or driver’s licenses. Doc. 314, at 166-167; Doc. 316, at 55-56. And he also took and kept BJH’s debit card linked to the account that received her military disability pay. See Doc. 316, at 71-72, 107. On days when BJH received a deposit for her military disability pay, Mitchell would give back her debit card so she could withdraw the money. Doc. 316, at 71, 107. Even then, Mitchell usually sent BTJ to escort BJH to make sure she returned and gave him the money. Doc. 316, at 71-72, 107. Mitchell even required the victims to have sex with him upon demand. Doc. 314, at 241; Doc. 316, at 74.

Breaking any of these rules, including failing to ask Mitchell for permission to do just about anything, had consequences. One of the biggest consequences included Mitchell withholding heroin, causing the victims to get “dope sick” and have withdrawals. See, *e.g.*, Doc. 314, at 173, 191, 223, 268; Doc. 315, at 59; Doc. 316, at 73, 81, 89. He would also give them meth, which would give the victims energy to perform commercial sex acts while still suffering from withdrawal

symptoms. Doc. 314, at 40; Doc. 316, at 74. For that reason, the meth flowed freely, and Mitchell forced the victims to use it. Doc. 314, at 40; Doc. 316, at 74.

*d. Mitchell Also Controlled The Victims Through Physical Violence And Psychological Abuse*

Mitchell reinforced his rules and control over the victims through various means in addition to addiction manipulation, including physical violence and psychological abuse.

a. Mitchell resorted to violence or threats of violence to instill fear in the victims and make sure they followed his rules. He did so primarily by making an example of one of the victims—BTJ. All the victims saw Mitchell savagely beat BTJ almost every day, mainly for arbitrary reasons such as looking at him the “wrong” way. Doc. 314, at 23, 172, 181, 236; Doc. 315, at 60-61; Doc. 316, at 73, 88. One time, after learning BTJ was about to perform a sex act without his permission, Mitchell knocked her to the ground and beat her with a wooden table leg with protruding nails, before “pour[ing] Awesome all over [her], the cleaning stuff, and put[ting] the trash can over [her] head.” Doc. 314, at 26. Mitchell also, on separate occasions, violently shaved BTJ’s head, causing injury to her scalp; cut her face with a razor; and stabbed her with a knife. Doc. 313, at 7-10; Doc. 314, at 40, 48, 53-56, 172-173; Doc. 315, at 66-72.

Mitchell used countless means to beat the victims. At times he beat them with his fists, a cane, a phone charger, and furniture. See Doc. 314, at 26, 49-51,

172, 185, 190, 237, 248; Doc. 315, at 12, 62-63; Doc. 316, at 73, 79, 88. He also kicked them. See Doc. 314, at 30, 184 (beating HBB in the bathroom and kicking her down some stairs). Mitchell intimidated the victims by carrying a gun with him and even beating some of the victims with it. Doc. 314, at 49-52, 182-186, 241; Doc. 316, at 73, 88. He also directed the victims to beat each other. Doc. 314, at 60; Doc. 315, at 68-69. Their fear of Mitchell's violence kept the victims compliant. Doc. 314, at 173. Some even believed he would kill them. Doc. 314, at 62; Doc. 316, at 79-80.

b. Separately, Mitchell used multiple forms of humiliation and degradation to control the victims psychologically. Doc. 314, at 171, 179. He constantly belittled the victims, calling them "whores," "bitches," "junkie[s]," "stupid," "dumb ass," "scum of the earth," and "every other name you could think of." Doc. 314, at 26-27, 171, 238; Doc. 315, at 58; Doc. 316, at 73. Mitchell told them that they were "worthless" and "pathetic." Doc. 314, at 238.

He threatened to send nude or sexually suggestive photos and videos of the victims engaging in "plays" to their family members if they disobeyed him. See Doc. 314, at 238-239; Doc. 315, at 66; Doc. 316, at 86. In fact, Mitchell threatened to and then ultimately did send a video of BTJ engaging in sex acts to BTJ's father to humiliate her and keep her in line. Doc. 314, at 34-35, 57, 238-239. And he twice posted nude photos of JNE on her Facebook page from her

phone, which JNE discovered only after Mitchell returned her phone. Doc. 315, at 66-67.

Mitchell also degraded the victims in front of others. One time, he made BTJ take off her clothes and then “put his belt around [her] neck and made [her] walk on [her] hands and [her] knees outside like a dog” in the rain in front of people. Doc. 314, at 61, 248-249. Mitchell would watch video recordings of the victims and either critique them or make fun of them, sometimes in front of others. Doc. 314, at 34; Doc. 316, at 83. He ordered LRE, JNE, and BTJ to engage in sex acts with his friends or allowed these friends to perform sex acts on the victims, many times in full view of everyone in the room. Doc. 314, at 57-58, 239-240; Doc. 315, at 67; Doc. 316, at 87. Mitchell also forced LRE and BTJ to engage in sex acts with each other in front of others. Doc. 314, at 58, 240-241; Doc. 316, at 87.

Whenever possible, Mitchell exploited the victims’ vulnerabilities to maintain his dominance and control. He would play with their minds to make them feel as though he cared for them or was their family, including by telling them that they “were better with him because other people would treat [them] worse.” Doc. 314, at 179-180; see also, *e.g.*, Doc. 315, at 66.

3. *Standard Of Review*

This Court reviews evidentiary rulings for abuse of discretion. See *United States v. Hernandez*, 906 F.3d 1367, 1369 (11th Cir. 2018). Under this standard, this Court “must affirm” unless the district court “has made a clear error of judgment, or has applied the wrong legal standard.” *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc), cert. denied, 544 U.S. 1063 (2005). Deference is “the hallmark of abuse-of-discretion review,” and this Court should reverse only when an evidentiary ruling is “manifestly erroneous.” *Id.* at 1258-1259 (citation omitted).

This Court reverses an erroneous evidentiary ruling “only if the resulting error was not harmless.” *United States v. Hands*, 184 F.3d 1322, 1329 (11th Cir.), corrected by 194 F.3d 1186 (11th Cir. 1999). In other words, reversal is warranted “only if [the error] resulted ‘in actual prejudice because it had substantial and injurious effect or influence in determining the jury’s verdict.’” *United States v. Guzman*, 167 F.3d 1350, 1353 (11th Cir. 1999) (internal quotation marks and citation omitted).

When the defendant alleges that “the exclusion of evidence violated a constitutional guarantee,” this Court reviews the alleged error de novo. *United States v. Sarras*, 575 F.3d 1191, 1209 n.24 (11th Cir. 2009). This Court need not reverse any error if it “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 *United States v. Lankford*, 955 F.2d 1545, 1552 (11th Cir. 1992).

### **SUMMARY OF ARGUMENT**

This Court should affirm Mitchell’s convictions. Mitchell challenges two of the district court’s evidentiary rulings: (1) its application of Rule 412 to exclude evidence of the victims’ prior acts of prostitution; and (2) its admission of evidence under Rule 404(b) regarding Mitchell’s drug-dealing activities. Neither challenge has merit.

1. The district court’s straightforward application of Rule 412 to limit Mitchell’s cross-examination into the victims’ other sexual behavior was proper and did not deny Mitchell his constitutional right to confront witnesses and present a complete defense. Rule 412 prohibits the introduction of evidence to show that a victim engaged in other sexual behavior or to prove a victim’s sexual predisposition. Contrary to Mitchell’s argument that he should have been allowed to introduce this evidence to show that his victims willfully engaged in commercial sex acts, this Court has held that such evidence is irrelevant to whether a victim voluntarily participated in a commercial sex act during the time of the charged offense. It has further held that excluding such evidence does not violate a

defendant's constitutional rights. In arguing otherwise, Mitchell mischaracterizes the victims' trial testimony, which in no way opened the door to this evidence.

2. Nor did the district court err in permitting the victims to testify about Mitchell's drug-related dealings with them to prove he committed sex trafficking. Indeed, the victims' testimony revealed that Mitchell relied extensively on his position as a drug dealer to recruit the victims, increase and maintain their drug addictions, and then, once they were dependent on him, demand that they engage in commercial sex acts for his financial benefit. And Mitchell would exert further control over his victims by specifically withholding drugs and causing them to experience withdrawal symptoms. The district court had ample basis to conclude that evidence of Mitchell's drug dealing was inextricably intertwined with evidence of his sex trafficking scheme and therefore not subject to Rule 404(b). But even if Rule 404(b) applied, the district court did not abuse its discretion in admitting drug-related evidence that the government relied on to show Mitchell's intent to cause the victims to engage in sex trafficking where the probative value of the evidence outweighed its prejudicial effect.

## ARGUMENT

### I

#### **THE DISTRICT COURT PROPERLY EXCLUDED EVIDENCE OF THE VICTIMS' OTHER SEXUAL BEHAVIOR UNDER RULE 412**

*A. Federal Rule Of Evidence 412*

Rule 412 generally prohibits, in sex offense cases, the admission of “(1) evidence offered to prove that a victim engaged in other sexual behavior; or (2) evidence offered to prove a victim’s sexual predisposition.” Fed. R. Evid. 412(a)(1) and (2). Rule 412 was designed “to safeguard the alleged victim against the invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details.” Rule 412 Advisory Committee Notes, 1994 Amendments. The rule thus “encourages victims of sexual misconduct to institute and to participate in legal proceedings against alleged offenders.” *Ibid.*

In criminal cases, Rule 412 includes three instances in which a court may admit certain information related to a victim’s sexual behavior. The first two exceptions are inapplicable here. The third concerns “evidence whose exclusion would violate the defendant’s constitutional rights.” Fed. R. Evid. 412(b)(1)(C). Yet that provision is “a narrow exception” to the “broad general principle” that evidence of a victim’s prior sex acts is inadmissible. *United States v. Culver*, 598 F.3d 740, 749 (11th Cir. 2010).

*B. Mitchell Cannot Show That The District Court's Decision To Exclude Evidence Of The Victims' Other Sexual Acts Violated The Constitution*

Mitchell claims that the district court violated his constitutional right to confront the witnesses against him and present a complete defense by prohibiting him from using evidence of his accusers' prior acts of prostitution to show that the victims "engaged in commercial sex acts on their own volition" and not because he "cause[d] anyone to engage in commercial sex acts or \* \* \* travel to engage in prostitution." Br. 14; see Br. 18. This Court should reject Mitchell's argument based on a straightforward application of Rule 412 and settled precedent.

1. A defendant has a constitutional right to confront witnesses against him and present a complete defense. *Culver*, 598 F.3d at 749; U.S. Const. Amend. VI. But that right "is not unbounded." *United States v. Frazier*, 387 F.3d 1244, 1271 (11th Cir. 2004) (en banc), cert. denied, 544 U.S. 1063 (2005). The Confrontation Clause of the Sixth Amendment guarantees "only an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *United States v. Jeri*, 869 F.3d 1247, 1262 (11th Cir. 2017) (citation and internal quotations omitted).

Rather, "trial judges retain wide latitude . . . to impose reasonable limits on [testimony] based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Culver*, 598 F.3d at 749 (alterations in original)

(quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). To decide whether the district court violated the defendant’s right to confront a witness, this Court considers “whether a reasonable jury would have received a significantly different impression of the witness’ credibility had counsel pursued the proposed line of cross-examination.” *United States v. Whyte*, 928 F.3d 1317, 1334 (11th Cir. 2019) (quoting *United States v. Diaz*, 26 F.3d 1533, 1539-1540 (11th Cir. 1994)). And “[l]imitations on a defendant’s constitutional right to present evidence are permissible unless they are arbitrary or disproportionate to the purposes they are designed to serve.” *Culver*, 598 F.3d at 749 (internal quotation marks and citation omitted).

This Court and others have routinely rejected the argument that a victim’s other sex acts and sexual predispositions are relevant to whether the victim voluntarily participated in commercial sex acts during the time specified in the indictment, despite the defendants’ constitutional objections. See, e.g., *United States v. Williams*, 564 F. App’x 568, 575-577 (11th Cir.), cert. denied, 574 U.S. 912 (2014); see also *United States v. Carson*, 870 F.3d 584, 593-594 (7th Cir. 2017), cert. denied, 138 S. Ct. 2011 (2018); *United States v. Lockhart*, 844 F.3d 501, 510 (5th Cir. 2016); *United States v. Gemma*, 818 F.3d 23, 34 (1st Cir.), cert. denied, 580 U.S. 975 (2016); *United States v. Mack*, 808 F.3d 1074, 1084 (6th Cir. 2015), cert. denied, 577 U.S. 1167 (2016); *United States v. Rivera*, 799 F.3d 180,

185 (2d Cir. 2015), cert. denied, 578 U.S. 1015 (2016); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015); *United States v. Valenzuela*, 495 F. App'x 817, 819-820 (9th Cir. 2012). This Court also has affirmed a district court's exercise of discretion in limiting a defendant's cross-examination despite the defendant's constitutional objections. See *Williams*, 564 F. App'x at 575-577; see also *Lockhart*, 844 F.3d at 509-510.

2. Mitchell still points to three instances during the testimony of two victims—BTJ and JNE—that he argues opened the door for him to ask about their prior prostitution as a basis for attacking their credibility. See Br. 23-26. Yet none of these exchanges establishes that Mitchell should have been allowed to introduce otherwise barred evidence that the district court appropriately excluded under Rules 412 and 403.

Mitchell first challenges two exchanges that took place during the government's direct examination of BTJ. He argues that BTJ's testimony "indicate[d] to the jury that she had never before engaged in prostitution until she met [him]." Br. 14-17. But he takes those exchanges out of context and, as the district court recognized, cannot show that they opened the door to permit him to introduce evidence of BTJ's other sex acts.

During the first exchange, after BTJ testified that she met Mitchell "through mutual friends" and would buy drugs from him, the government asked: "Did there

come a time in your interactions where he suggested to you that he might know people that you could get money from?” Doc. 314, at 7. BTJ responded, “Yes,” and then explained what Mitchell told her she needed to do—“have sex or just get undressed”—to get the money. Doc. 314, at 7-8.

As for the second exchange, BTJ testified that, after Mitchell had been giving her drugs and “paying for everything,” he told her that she “was getting expensive, and that [she] needed to do something to get some money.” Doc. 314, at 14. She explained that, to make money, Mitchell told her to “[p]ost an ad on Back Page.” Doc. 314, at 14. At the time, they “were in Auburn,” and Mitchell paid for their hotel. Doc. 314, at 14-15. Mitchell’s acquaintance created and posted an ad for BTJ, after which BTJ began receiving calls from people interested in “making a play”—*i.e.*, engaging in sex for money. Doc. 314, at 16. The government then asked: “So after this friend of [Mitchell’s] posts the ad for you on backpage.com, did you then see a play?”—in other words, did BTJ engage in commercial sex acts? Doc. 314, at 16. BTJ responded, “Yes,” and then the government asked, “Do you recall the first play that you ever saw?” Doc. 314, at 16. BTJ again responded “Yes,” and then explained the details of that first commercial sex act at Mitchell’s behest in Auburn. Doc. 314, at 16-17.

As the government explained below, the questions posed to BTJ, taken in context, show that the exchange did not concern whether she had ever engaged in

commercial sex acts before meeting Mitchell or whether Mitchell was the one who taught her how to engage in those acts. See Doc. 314, at 64-66. Rather, the government asked BTJ questions to establish the background context of when she met Mitchell, where she stayed with him, and how she began engaging in commercial sex acts for his financial benefit. See Doc. 314, at 64-66. Nothing in the testimony suggests otherwise. Nor would a “reasonable jury \* \* \* have received a significantly different impression of [BTJ’s] credibility” had Mitchell questioned her about her other sex acts. *Whyte*, 928 F.3d at 1334.

“The district court’s exclusion of evidence of [some of the victim’s] prior [and subsequent] sexual history was not arbitrary or disproportionate to the purposes that Rule 412 was designed to serve.” *Culver*, 598 F.3d at 749. If anything, permitting the evidence Mitchell sought to introduce “would have confused the jury” by injecting irrelevant information into the case when the question presented was whether Mitchell used force, fraud, or coercion to cause BTJ to engage in commercial sex acts. *Ibid.* Whether she otherwise engaged in prostitution would not answer that question and would only invite a trial-within-a-trial that invited witness harassment and confused the issues.

The district court had no difficulty concluding as much. After rereading the testimony, the court did “not find that the issue of credibility on whether or not [BTJ] had engaged in prior sex acts for money had been \* \* \* at issue in the



case, both looking at the questions individually and looking in the overall context in which the testimony was given.” Doc. 314, at 67-68. The court elaborated that, under Rule 412, “it would take a whole lot for a credibility issue to create an exception to the general exclusion of that kind of testimony.” Doc. 314, at 68. And it found that “whatever little probative value” any evidence of BTJ’s prior sex acts would have, that evidence did not come “close to \* \* \* rising to a level where [the court was] going to allow the defendant to question her” given the “sensitive,” “personal[,] and prejudicial nature” of that evidence. Doc. 314, at 68. Though the court prohibited this line of questioning, Mitchell was free to cross-examine BTJ regarding her actual dealings with Mitchell, including whether he used prohibited means to cause her to engage in commercial sex. See, *e.g.*, Doc. 314, at 18, 22-27, 34-40, 48-62.

The third exchange involving JNE fares no better. Mitchell’s counsel sought to ask JNE about her subsequent living arrangements after residing with Mitchell. Doc. 315, at 100-101. JNE explained that she went to the home of a Mr. Payne, and then Mitchell’s counsel asked, “[h]ow did you pay for your stay at Mr. Payne’s home?” Doc. 315, at 101. The government objected, arguing that the question violated the court’s Rule 412 ruling because the answer to opposing counsel’s question involved a subsequent act of prostitution, namely that JNE was engaging

in sex with Mr. Payne in exchange for paying rent. Doc. 315, at 101-102. The district court sustained the government's objection. Doc. 315, at 102.

Unlike the exchanges involving BTJ, Mitchell does not appear to challenge JNE's credibility or, if he does, provide the reason for doing so. Nor does he argue the government opened the door for him to explore JNE's later acts of prostitution. He contends only that exploring evidence of the victims' other sexual acts was "vital" to his defense that he caused none of the victims to perform commercial sex acts and that, during his time with them, they prostituted themselves on their own volition. Br. 18-19. But as explained above, courts routinely reject the argument Mitchell raises because the inquiry concerns Mitchell's conduct vis-à-vis the victim and not whether the victim otherwise engaged in prior or subsequent commercial sex acts. See pp. 21-22, *supra*.<sup>5</sup>

3. Even if the district court erred in declining to admit evidence of the victims' other commercial sex acts, that error was harmless beyond a reasonable

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<sup>5</sup> Regardless of the three exchanges Mitchell challenges on appeal, he was able, at other times, to confront some of the victims or rely on evidence admitted about their other acts of prostitution. For example, Mitchell cross-examined LRE about her prior acts of prostitution while working with her mother. See Doc. 314, at 252 ("[W]hat age were you when you and your mother made the decision to make plays together?"). He then asked LRE about how she secured "plays," and what she and her mother did with the proceeds. See Doc. 314, at 252-253. There was also evidence in the record that HBB, before meeting Mitchell, performed commercial sex acts. See Doc. 314, at 163-165. Even where Mitchell introduced this evidence, the jury still convicted him of the charged sex trafficking offenses.

doubt. “[T]he district court afforded [Mitchell] a constitutionally adequate opportunity” to cross-examine the victims on their testimony specific to interacting with him and whether he used prohibited means to cause the victims to engage in commercial sex acts. See *United States v. Sarras*, 575 F.3d 1191, 1213 (11th Cir. 2009) (holding defendant, given his ample opportunity to cross examine the victims, did “not me[e]t his burden of demonstrating that the district court’s application of Rule 412 violated a constitutional guarantee”). Mitchell also was able to, at other times, confront some of the victims or rely on evidence admitted about their other commercial sex acts. See p. 26, *supra*. And he had an opportunity to probe the victims as to any bias or motive to lie and challenge their credibility apart from the prohibited Rule 412 evidence when exploring the victims’ arrests for prostitution or other offenses during their time with Mitchell. See, e.g., Doc. 314, at 93-99, 200-203; Doc. 315, at 96-97; Doc. 316, at 113-114, 122-124. In the end, the jury convicted Mitchell on all counts.

## II

### **THE DISTRICT COURT ACTED WITHIN ITS DISCRETION UNDER RULE 404(B) AND RULE 403 TO ADMIT EVIDENCE OF MITCHELL’S DRUG-DEALING ACTIVITIES**

#### *A. Authority To Admit Evidence Of A Defendant’s Wrongful Acts*

Rule 404(b) prohibits admitting extrinsic evidence of a defendant’s wrongful acts to show that he acted in conformity with his character on a particular occasion.

Fed. R. Evid. 404(b). Evidence is not extrinsic (*i.e.*, intrinsic) and thus falls outside of Rule 404(b) if it is: “(1) an uncharged offense which arose out of the same transaction or series of transactions as the charged offense, (2) necessary to complete the story of the crime, or (3) inextricably intertwined with the evidence regarding the charged offense.” *United States v. Edouard*, 485 F.3d 1324, 1344 (11th Cir. 2007) (internal quotation marks and citation omitted). In relevant part, “evidence is inextricably intertwined with the evidence regarding the charged offense if it forms an integral and natural part of the witness’s accounts of the circumstances surrounding the offenses for which the defendant was indicted.” *Ibid.* (internal quotation marks and citation omitted). “Nonetheless, evidence of criminal activity other than the charged offense, whether inside or outside the scope of Rule 404(b), must still satisfy the requirements of Rule 403,” requiring that the probative value of the evidence outweigh any prejudice. *Ibid.* (citing Fed. R. Evid. 403).

*B. Evidence Of Mitchell’s Drug-Dealing Activities Is Inextricably Intertwined With Evidence Of His Sex Trafficking And Not Subject To Rule 404(b)*

Mitchell argues that the district court erred in allowing the government to present bad act evidence of his drug-dealing activities, in violation of Rule 404(b). See Br. 19-21. But Rule 404(b) does not apply when the challenged evidence, as here, is inextricably intertwined with evidence of the defendant’s charged crimes. Mitchell further contends that the victims’ testimony of his drug dealing was

“improper,” “prejudicial,” and “had little to no bearing on the substantive sex trafficking charges he faced.” Br. 20-21. Not so. The evidence was probative to show how Mitchell recruited and coerced the victims to commit sex trafficking, and it was not unduly prejudicial under Rule 403.

1. As a threshold matter, although Mitchell challenges generally the victims’ testimony about his drug-dealing activities, he neither identifies any testimony—indeed, he does not cite to the record at all—nor explains how that testimony was improper. For that reason alone, this Court need not entertain Mitchell’s Rule 404(b) argument on appeal. See *United States v. Williams*, 564 F. App’x 568, 574 n.8 (11th Cir. 2014) (declining to consider defendant’s “standing objection” to evidence of his drug dealing in sex trafficking case because “it is incumbent on [defendant] to identify on appeal the specific testimony that he is challenging” and the “Court will not scour the record and speculate as to objectionable testimony”), cert. denied, 574 U.S. 912 (2014). In any event, Mitchell’s argument fails on the merits.

2. As the district court correctly found, Mitchell’s drug-dealing activities were not evidence “used for propensity,” but “direct evidence that [went] to the elements of the crimes charged.” Doc. 225, at 3-4. That evidence specifically showed how Mitchell “recruit[ed]” the victims and “coerc[ed]” them “to engage in a commercial sex act.” 18 U.S.C. 1591(a). Mitchell relied extensively on his

power as a drug dealer to orchestrate his sex-trafficking scheme. He utilized his ability to access and distribute drugs to recruit vulnerable women struggling with drug addictions, increase and maintain their addictions, and then, once the women became dependent on him for drugs, demand that they engage in commercial sex acts for his financial benefit. Mitchell would then reinforce his demands by, among other things, withholding drugs and causing these women to have withdrawals and become “dope sick.” The victims’ testimony, as set forth below, discussed Mitchell’s drug-dealing activities only insofar as he relied on those activities to cause them to perform commercial sex acts.

The record shows that it was Mitchell’s drug-dealing activities that led him to meet and later recruit the victims for his sex-trafficking scheme. All the victims—LRE, HBB, JNE, BJH, and BTJ—testified that they suffered from various drug addictions when they first met Mitchell. See Doc. 314, at 6-7, 72-74, 86-87, 163-164, 215-217; Doc. 315, at 45; Doc. 316, at 62-64. LRE testified that when she first met Mitchell, he was at a party and had drugs on him. Doc. 314, at 216-217. She explained that later she began buying drugs from him, and Mitchell instructed her on how to inject heroin. Doc. 314, at 218-222. BTJ corroborated this testimony when she also testified that Mitchell introduced LRE to heroin. See Doc. 314, at 31. HBB and BJH both testified that they met Mitchell to buy heroin from him. Doc. 314, at 43, 164; Doc. 316, at 63-64. And JNE and BTJ likewise

stated that they both met Mitchell through mutual friends, and they would also either buy or get drugs from him. Doc. 314, at 7-8; Doc. 315, at 46-49.

Mitchell then controlled the victims' drug addictions by either giving them heroin for free or in exchange for running simple errands. See Doc. 314, at 13, 166-167, 189, 223; Doc. 315, at 48-53. BTJ testified that Mitchell would send her pictures of drugs to entice her to come to him and, when she did, he would give her drugs, like meth, for free. Doc. 314, at 12-13. HBB stated that, even though she did not have money, when she went to where Mitchell was staying, he would give her heroin and, "if [she] did plays, he would give [her] more." Doc. 314, at 166. In fact, Mitchell gave both BTJ and HBB heroin "for free and as a result of doing plays." Doc. 314, at 167. HBB also testified that when other girls came around, Mitchell would give them drugs for free in the beginning "to get them to stay or to work, make money." Doc. 314, at 189. And JNE stated that at the beginning she received heroin for free and then in exchange for running errands, such as giving "[Mitchell's] friends a ride." Doc. 315, at 48-49, 53.

After increasing the victims' dependence on heroin, Mitchell would then stop giving or selling heroin to the victims unless they engaged in commercial sex acts and complied with his rules. LRE testified that during some weeks, Mitchell required the victims "to get [a] certain amount of money" before he would give them any drugs. Doc. 314, at 233. She elaborated that, if she did not perform sex

acts, then she “would be dope sick” and have “withdrawals.” Doc. 314, at 233-234. JNE testified that Mitchell at times refused to give her and the other victims heroin. Doc. 316, at 73. HBB testified that, after being “really sick” and not “hav[ing] any money” she had to get dope from Mitchell “and of course he made [her] stay to do a play.” Doc. 314, at 191. And BTJ explained that the victims would have to hold each other’s drugs “until [they] got some money” and could ask Mitchell for permission to use the drugs. Doc. 314, at 38.

The victims obeyed Mitchell’s demands for fear of dope sickness and withdrawals. For example, HBB testified that the consequences of the victims acting out or not following the rules would result in Mitchell withholding heroin from them. Doc. 314, at 173. LRE explained that “none of [the victims] could get any dope unless we did what [Mitchell] told us, and, you know, we weren’t allowed to go and get dope from anybody else.” Doc. 314, at 268. She elaborated that “it was either do as he says or be sick.” Doc. 314, at 268. And JNE testified that if they did not follow Mitchell’s rules for the play, he would not give them “anything to get high,” and they would get sick. Doc. 315, at 59.

The record amply demonstrates that evidence of Mitchell’s drug dealing “form[ed] an integral and natural part of the witness’s accounts of the circumstances surrounding” how Mitchell forced and coerced them to engage in commercial sex acts. *Edouard*, 485 F.3d at 1344 (internal quotation marks and



citation omitted); *United States v. Parks*, 902 F.3d 805, 814 (8th Cir. 2018) (holding district court did not err in admitting other act evidence where defendant's "offering of drugs[] provided context to the prostitution crimes with which he was charged").

This Court has several times affirmed a district court's decision to admit drug evidence as intrinsic and inextricably intertwined with evidence of sex trafficking. See *United States v. McKinley*, 647 F. App'x 957, 962 (11th Cir. 2016) (holding district court did not err "in admitting testimony of [defendant's] drug activities, since the testimony was intrinsic to the chain of events forming the context and set-up of his sex-trafficking" offenses); *Williams*, 564 F. App'x at 574 & n.8 (holding evidence of defendant's drug dealing was "inextricably linked with the charged misconduct of sex trafficking of a minor," where defendant enticed victims "into his home \* \* \* [and] offered narcotics to them, and then invited them to engage in sexual activity"); see also *United States v. Carson*, 870 F.3d 584, 594 (7th Cir. 2017) (finding that victims were "inextricably hooked on illegal drugs" and recognizing that "coercion involves \* \* \* abrupt withholding of drugs to cause severe withdrawal symptoms"), cert. denied, 138 S. Ct. 2011 (2018). It should also affirm here.

3. The probative value of the evidence of Mitchell's drug-dealing activities also outweighs its prejudicial effect under Rule 403. See *Williams*, 564 F. App'x

at 574 & n.6 (holding that the probative value of evidence of defendant's drug dealing to prove sex trafficking scheme "far outweighs the prejudicial effect" and noting that "[t]he use of intrinsic bad acts evidence [such as drug dealing] in cases involving sex trafficking is not unprecedented"); see also *United States v. Campbell*, 49 F.3d 1079, 1083-1084 (5th Cir. 1995) (affirming district court's ruling that probative value of evidence on how defendant "used drugs and violence to control the women and make them prostitute for him" outweighed its prejudicial effect). The district court still limited any potential prejudicial effect of the evidence by clarifying that it would "curtail any frequent references to [Mitchell] as a 'drug dealer' or 'drug distributor'" and that Mitchell "may object if he believes the Government has made improper or too frequent references to this evidence or if he wishes for the Court to give a limiting instruction to the jury." Doc. 225, at 4. Mitchell made no objections at trial related to this drug-dealing evidence, nor did he request any limiting instruction for that evidence.

Accordingly, the district court properly admitted the victims' testimony as intrinsic evidence beyond Rule 404(b)'s ambit that also complied with Rule 403.

*C. Evidence Of Mitchell's Drug-Dealing Activities Is Also Admissible Under Rule 404(b) To Prove Intent*

Even if evidence of Mitchell's drug-dealing activities were considered under Rule 404(b), the district court did not abuse its discretion to admit the evidence.

1. Rule 404(b) permits admission of other act evidence to prove, among other things, “intent.” Fed. R. Evid. 404(b)(2). The rule is one of “inclusion”; relevant evidence under the rule “should not lightly be excluded” where it is central to the government’s case. *United States v. Jernigan*, 341 F.3d 1273, 1280 (11th Cir. 2003). To be admissible under Rule 404(b), (1) “the evidence must be relevant to an issue other than the defendant’s character”; (2) “sufficient evidence must be presented to allow a jury to find that the defendant committed the extrinsic act”; and (3) “the probative value of the evidence must not be substantially outweighed by its undue prejudice.” *United States v. Sterling*, 738 F.3d 228, 238 (11th Cir. 2013), cert. denied, 572 U.S. 1143 (2014).

To convict Mitchell of sex trafficking, the jury had to find that he *knowingly* recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized, or solicited by any means a person to engage in a commercial sex act by force, fraud, or coercion. 18 U.S.C. 1591(a)(1). A “defendant who enters a not guilty plea makes intent a material issue which imposes a substantial burden on the government to prove intent, which it may prove by qualifying Rule 404(b) evidence absent affirmative steps by the defendant to remove intent as an issue.” *Edouard*, 485 F.3d at 1345 (quoting *United States v. Zapata*, 139 F.3d 1355, 1358 (11th Cir. 1998)). Mitchell proceeded to trial on the sex-trafficking charges and did not take affirmative steps to remove intent as an

issue. The government thus retained its burden to prove all elements of the charged offenses beyond a reasonable doubt.

Evidence of Mitchell's drug dealing was relevant to prove he acted knowingly to cause the victims to engage in commercial sex acts. *Sterling*, 738 F.3d at 238. As explained above, the jury heard the victims testify extensively about how Mitchell relied on his drug dealing and, specifically, his ability to provide and withhold drugs to recruit, entice, and coerce the victims into performing commercial sex acts for his benefit. See pp. 29-33, *supra*. That evidence was relevant for the government to prove his intent—because it shows that Mitchell deliberately used drugs as a way to coerce and compel his victims to perform commercial sex acts at his behest.

2. Nor was this evidence unduly prejudicial. Any prejudice to Mitchell in admitting evidence of his drug-dealing activities was substantially outweighed by the probative value of that evidence. See *Williams*, 564 F. App'x at 574 n.6; *Campbell*, 49 F.3d at 1083-1084; see also *Parks*, 902 F.3d at 814 (holding that “[t]he probative value of the [drug] evidence accordingly outweighed the danger of potential prejudice because it showed [defendant’s] intent to solicit, entice, and maintain these women so that they would engage in commercial sex acts”). The evidence of Mitchell's drug dealing also was no more shocking or prejudicial than the other evidence related to his coercing the women to engage in commercial sex

acts, such as his rampant use of physical and psychological violence. See pp. 13-15, *supra*; see also *United States v. Paulino*, 445 F.3d 211, 223 (2d Cir.), cert. denied, 549 U.S. 980 (2006).

*D. Any Error In Admitting The Challenged Evidence Was Harmless*

As a final matter, even if this Court determines that evidence of Mitchell's drug-related activities was neither intrinsic evidence of Mitchell's sex trafficking nor extrinsic evidence of his intent to cause the victims to engage in commercial sex acts, any error that the district court committed in admitting that evidence was harmless. See Fed. R. Crim. P. 52(a); *United States v. Harriston*, 329 F.3d 779, 789 (11th Cir. 2003) (explaining that an evidentiary error is harmless "where there is overwhelming evidence of guilt").

The evidence establishing Mitchell's guilt was overwhelming. The victims testified extensively that Mitchell also used physical and psychological violence to coerce them to, and reinforce his demands that they, perform commercial sex acts for his financial benefit. See pp. 13-15, *supra*.

**CONCLUSION**

For the reasons stated above, this Court should affirm the judgment.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that the attached BRIEF FOR THE UNITED STATES AS APPELLEE:

(1) complies with the type-volume limitation imposed by Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 8,874 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

(2) 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 it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365, in 14-point Times New Roman font.

s/ Natasha N. Babazadeh  
NATASHA N. BABAZADEH  
Attorney

Date: October 13, 2023

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2023, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the United States Court of Appeals for the Eleventh 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. I further certify that four paper copies of the foregoing brief were sent to the Clerk of the Court by Federal Express.

s/ Natasha N. Babazadeh  
NATASHA N. BABAZADEH  
Attorney