NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 2, 2023*
Decided November 3, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 21-2907

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CALVIN C. FREEMAN,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 2:19-cr-103-PP

Pamela Pepper,
Chief Judge.

O R D E R

Calvin Freeman violently forced women into prostitution for his financial benefit. A jury found him guilty of multiple offenses, including sex trafficking by force, fraud, or coercion. The district court sentenced him to 45 years' imprisonment, a term below the applicable range under the Sentencing Guidelines. On appeal, he contests the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

sufficiency of the evidence on the sex trafficking counts; the soundness of several evidentiary rulings and the jury instructions; and the constitutionality of the sex trafficking statute and the Guidelines. We affirm the judgment and sentence.

Starting in 2007, Freeman recruited women to perform commercial sex acts in multiple cities including Milwaukee, Las Vegas, New Orleans, and Chicago. He provided them with luxury items, housing, and essentials. Freeman took for himself all the money the women earned, and he exerted significant control over their lives. He dictated when they had to work and who they could talk to, monitored their movements, and often verbally and physically abused them to maintain control.

Freeman was indicted for conspiracy to engage in sex trafficking, 18 U.S.C. § 1594(c); sex trafficking by force, fraud, or coercion, § 1591(a)(1), (b)(1); sex trafficking of a minor, *id.*; transporting someone in interstate commerce for prostitution, § 2421(a); obstructing sex trafficking enforcement, § 1591(d); transporting a minor in interstate commerce to engage in criminal sexual activity, § 2423(a); unlawfully possessing guns and ammunition as a felon, § 922(g)(1); and contempt of court, § 401(3). During the seven-day jury trial, the government called several witnesses. Two victims described their work for Freeman and the physical and psychological injuries he inflicted. A third woman who had worked intermittently for Freeman corroborated the victims' accounts. A trafficking expert explained the psychology of sex trafficking offenses. One victim's father and a friend testified about their attempts to persuade her to stop working for Freeman. Several Las Vegas and Milwaukee police officers detailed their investigations of Freeman's conduct, and a financial investigator introduced bank records and travel records tracing the cash Freeman made from sex trafficking and his interstate travel with his victims. The jury found Freeman guilty on 14 of the 15 counts that it considered, acquitting him only of sex trafficking a minor. The district court denied Freeman's motions for a judgment of acquittal.

Before the sentencing hearing, Freeman lodged no objections to the presentence investigation report (PSR), which the district court adopted at the sentencing hearing after confirming that neither party objected. The Guidelines capped the offense level at 43—though it would have been 45 if possible—and set a criminal history category of V; these inputs yielded a sentencing range of life imprisonment. The government asked for a life sentence, and Freeman argued for 25 years. After considering the parties' arguments, the § 3553(a) factors, and pleas for mercy from Freeman's family, the district court imposed a 45-year prison sentence and 5 years of supervised release. In the statement of reasons, the court explained that the sentence was "an expression of hope"

that Freeman was capable of redemption. Based on information in the PSR, the court also ordered $266,000 in restitution to the victims.

Freeman appealed and then moved for permission to represent himself. We granted the motion after concluding that his waiver was knowing and voluntary. *See Faretta v. California*, 422 U.S. 806, 831–35 (1975). Freeman challenges the sufficiency of the evidence supporting the two convictions for sex trafficking by force, fraud, or coercion. He also challenges several evidentiary rulings, and the validity of a statute he was convicted under, the accuracy of the jury instructions, and the application of the Sentencing Guidelines.

Freeman first argues that the evidence was insufficient to support his conviction on the two counts of sex trafficking by force, fraud, or coercion under § 1591(a)(1). He contends that the evidence showed that the victims voluntarily performed sex work, freely entering and exiting his employ at various times. We view the evidence in the light most favorable to the prosecution and consider whether it would permit a rational jury to find beyond a reasonable doubt that Freeman pushed his victims into sex trafficking using force, fraud, or coercion. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The convictions must stand because the testimony from two victims and an expert, among other evidence, amply supports the jury verdict. Each count centered on one victim, and both victims testified that Freeman forced and coerced them into prostitution. The first, "AV-1," testified that Freeman would often punch her and whip her with leather belts for hours at a time when she refused to work. She explained that everything she earned would go to Freeman, and that if he caught her keeping money for herself, he would punish her. Several of Freeman's attacks on AV-1 required her hospitalization. She recounted that, on one harrowing occasion, Freeman smeared human feces on her face after she tried to send money home to her family. AV-1 testified that, because of all this, at times she had no choice but to continue working for Freeman. Her testimony was corroborated by photos of her injuries and testimony from her father, a friend in Las Vegas, and police officers.

The second victim, "AV-2" (whom Freeman was accused of trafficking both when she was a minor and an adult) testified about several occasions when Freeman beat her with a belt; one time, he slammed her into a bathtub after she refused to work. The jury also saw video of Freeman accosting AV-2 outside a Las Vegas casino and forcing her into his car to go back to work for him.

Further, the government's expert—an attorney who trains criminal justice professionals to identify and assist victims of sex trafficking—explained common tactics of pimps and the trauma that many sex-trafficking victims experience. She discussed how Freeman exploited the victims' vulnerabilities to manipulate them into staying with him. She also explained why AV-1 nervously laughed during her testimony (AV-1 said laughing was easier than crying), why AV-2 could not remember at trial certain statements she had made to the grand jury (Freeman's presence frightened her), and why another victim-witness (known as L.R.) turned her body completely away from Freeman during her testimony so she would not have to look at him. The jury was entitled to rely on this expert to understand the behavior and psychology of the victims. *See United States v. Williams*, 900 F.3d 486, 490–91 (7th Cir. 2018) (admitting testimony of sex-trafficking expert to explain how defendant's actions were consistent with sex-trafficking scheme). And based on this evidence and the victims' testimony, plus the testimony of a victim's family member, a reasonable jury could conclude that, at least at times, the victims did not voluntarily engage in prostitution and instead were compelled by Freeman. *See United States v. Campbell*, 770 F.3d 556, 573–74 (7th Cir. 2014) (defendant forced victim to live and perform sex acts at spa). Therefore, sufficient evidence supports the jury verdict on the two counts that Freeman challenges.

Freeman next challenges numerous evidentiary rulings, which we review for abuse of discretion. *United States v. Bonin*, 932 F.3d 523, 540 (7th Cir. 2019). Freeman first argues that the testimony of L.R., the victim whose trafficking was not the subject of any charge, should have been excluded. He contends that her testimony was cumulative of the other two victims' and unfairly prejudicial, *see* FED. R. EVID. 403, and further that it was improper evidence of other bad acts, *see* FED. R. EVID. 404. But L.R.'s testimony was not cumulative: she provided direct evidence of conspiracy by testifying about how she was recruited to work for Freeman, how others assisted the operation, and how he forced his victims to perform that work. *See United States v. Carson*, 870 F.3d 584, 600 (7th Cir. 2017). For the same reason, L.R.'s testimony had a purpose other than proving Freeman's bad character, *see* FED. R. EVID. 404(b)(1). Finally, a district court has vast discretion to determine whether the probative value of evidence outweighs its prejudicial effects; here, we see no abuse of discretion in the court's assessment. *See United States v. Jackson*, 898 F.3d 760, 764–65 (7th Cir. 2018).

Freeman next challenges the district court's decision to bar his evidence that AV-2 had a business of making adult videos, which he believed would help prove that she worked for him as part of a larger business strategy. But Rule 412 of the Federal Rules of Evidence forbids the admission in criminal cases of evidence of a victim's prior

sexual behavior, with exceptions not argued here. We have previously held that evidence of a victim's prior, voluntary, sex work was not probative of whether the victim was pushed into prostitution by force, fraud, or coercion on the charged occasions. *Carson*, 870 F.3d at 593–94. Although Freeman asserts that his case is distinguishable because his evidence about AV-2 pertained to the adult film business, not prostitution, the same principle—that her other business says nothing of whether he used force, coercion, and threats to make her work for him—applies, and so excluding the evidence was proper. *See id.* And even if the evidence were admissible, Freeman did not provide sufficient notice that he intended to introduce it, which is an independent reason to affirm the ruling. *See* FED. R. EVID. 412(c); *United States v. Boyles*, 57 F.3d 535, 548 (7th Cir. 1995).

Freeman next challenges the legality of the sex-trafficking statute, the jury instructions, and the application of the Sentencing Guidelines. Because he did not raise these arguments in the district court, we review only for plain error. *See* FED. R. CRIM. P. 52(b); *United States v. Natale*, 719 F.3d 719, 742 (7th Cir. 2013) (jury instructions); *United States v. Tichenor*, 683 F.3d 358, 362 (7th Cir. 2012) (Guidelines). But we see no errors at all.

Freeman first contends that the statute prohibiting sex trafficking, 18 U.S.C. § 1591(a), is unconstitutionally vague because it sets out two offenses: sex trafficking of a minor and sex trafficking of an adult by force, fraud, or coercion. He suggests that he lacked notice of whether he was indicted for trafficking a minor (at all) or for trafficking adults through force, fraud, or coercion. Even if the statute is not a model of clarity, however, it unmistakably prohibits the sex trafficking of anyone when it occurs through force, fraud, or coercion, and the sex trafficking of minors in any circumstance. *See United States v. McMillian*, 777 F.3d 444, 447 (7th Cir. 2015) (rejecting constitutional challenge to § 1591). And the indictment set forth the particulars of his conduct in separate counts of trafficking a minor and trafficking adult women through force, fraud, or coercion. Therefore, it provided the required notice of the allegedly unlawful conduct. Relatedly, he argues that the legislative history of § 1591 demonstrates that Congress intended stronger punishments for sex trafficking of minors than of adults, making the penalty provision, which applies to both versions of the offense, ambiguous. But the plain language of § 1591(b) does not leave room for doubt that the same penalties apply whether someone traffics a minor or traffics an adult through force, fraud, or coercion. Consulting legislative history is unwarranted. *See Salinas v. United States*, 522 U.S. 52, 57 (1997) ("Only the most extraordinary showing" of contrary legislative history justifies departing from plain language).

Freeman next argues that the district court rewrote § 1591 in the jury instructions and therefore violated the separation of powers. He explains that the statute places the interstate commerce element first, while the court here put it at the end. But the court gave this circuit's pattern jury instruction, with the commerce element last, and those instructions are presumed proper. *See United States v. Marr*, 760 F.3d 733, 744 (7th Cir. 2014). Moreover, the order of the elements does not matter as long as the instruction captures them accurately. *See United States v. Lawrence*, 788 F.3d 234, 245 (7th Cir. 2015) (no error if jury instructions, considered as a whole, do not mislead the jury).

Last, Freeman argues that the district court wrongly relied on a 2007 amendment to the Guidelines that increased the offense level for his conviction for prostitution-related transportation of a minor, 18 U.S.C. § 2423(a), in violation of the Ex Post Facto Clause. *See Peugh v. United States*, 569 U.S. 530, 544 (2013). Indeed, Freeman's criminal conduct began before 2007, when the amendment increased the base offense level from 24 to 28, U.S.S.G. § 2B1.3. But this did not affect Freeman's overall sentencing range. *See United States v. Fletcher*, 763 F.3d 711, 718 (7th Cir. 2014). The offense of transporting a minor was appropriately grouped with sex trafficking AV-2—the same victim—through force, fraud, or coercion. *See* U.S.S.G. § 3D1.2(a). The adjusted offense level for the group was 40 both before and after the 2007 amendment. In any case, Freeman's criminal conduct continued well past 2007; for example, the indictment charged him with trafficking AV-2 until at least 2016. When criminal conduct continues across two versions of the Guidelines, the district court may use the newer version. *See Fletcher*, 763 F.3d at 716–17 (no *Peugh* error for applying newer Guidelines to grouped offenses).

Finally, we note that, throughout his appellate brief, Freeman briefly mentions statutory or constitutional provisions that he implies are relevant to the issues on appeal. But because he does not adequately develop arguments based on these provisions, they are waived. *United States v. Barr*, 960 F.3d 906, 916 (7th Cir. 2020).

AFFIRMED