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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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United States of America,

No. CR-18-00422-001-PHX-SMB

10

Plaintiff,

ORDER

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v.

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Michael Lacey, et al.

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Defendant.

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The Court is in receipt of Defendants Michael Lacey, James Larkin, John Brunst, Scott Spear, Andrew Padilla, and Joye Vaught’s Motion in Limine to Preclude Presentation of Certain Evidence, (Doc. 908), to which the Government responded. (Doc. 961.) Defendants requested oral argument, but the Court declines to hold oral argument on the motion, finding that it is unnecessary. The Court has considered the pleadings and the applicable law and now grants in part and denies in part Defendants’ motion for the reasons discussed below.

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I. BACKGROUND

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On July 25, 2018, a federal grand jury returned a one hundred count superseding indictment against several of the Defendants in this case alleging that the Defendants engaged in various crimes related to the operation of the website Backpage.com (“Backpage”), including conspiracy to commit a violation of the Travel Act, substantive Travel Act violations, conspiracy to commit money laundering, and substantive counts of money laundering. (Doc. 230.) The Travel Act charges related to allegations that

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1 Defendants facilitated business enterprises involved in prostitution. Defendants bring this
2 motion to move the Court in limine for an order precluding the admission of certain
3 evidence at trial that Defendants contend is irrelevant, prejudicial, and bears no connection
4 to the crimes charged. Specifically, Defendants seek an order precluding the Government
5 from presenting evidence of: (1) sex trafficking or child-sex trafficking; (2) third-party
6 criminal conduct other than prostitution; (3) a third party's Travel Act conviction from
7 1987; and (4) purported prostitution ads from printed publications. (Doc. 908 at 1.) In
8 addition to being irrelevant and prejudicial under Rules 401 and 403, Fed. R. Evid.,
9 Defendants argue that this evidence would needlessly prolong trial, cause undue delay, and
10 waste judicial resources. (*Id.*)

11 **II. LEGAL STANDARD**

12 "Evidence may not be admitted at trial unless it is relevant, as defined by Rule 401
13 of the Federal Rules of Evidence." *United States v. Vellejo*, 237 F.3d 1008, 1015 (9th Cir.
14 2001). "Evidence is relevant if it has 'any tendency to make the existence of any fact that
15 is of consequence to the determination of the action more probable or less probable than it
16 would be without the evidence.'" *Id.* (citing Fed. R. Evid. 401). "Relevance is not a strict
17 test." *United States EEOC v. Placer ARC*, 147 F. Supp. 3d 1053, 1062 (C.D. Cal. 2015)
18 (quoting *United States v. Miranda-Uriarte*, 649 F.2d 1345, 1353 (9th Cir. 1981)). "As the
19 words 'any tendency' suggest, it is typically quite a 'low bar to the admissibility of
20 evidence.'" *Id.* (quoting *Capitol Specialty Ins. Corp. v. Beach Eatery & Surf Bar, LLC*, 36
21 F. Supp. 3d 1026, 1037 (E.D. Wash. 2014)). "The court may exclude relevant evidence if
22 its probative value is substantially outweighed by a danger of one or more of the following:
23 unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or
24 needlessly presenting cumulative evidence." Fed. R. Evid. 403. When evidence is
25 minimally relevant, it is likely to be minimally probative as well. *United States v. Wiggan*,
26 700 F.3d 1204, 1213 (9th Cir. 2012). Excluding otherwise relevant evidence under Rule
27 403 is "an extraordinary remedy to be used sparingly." *United States v. Mende*, 43 F.3d
28 1298, 1302 (9th Cir. 1995) (quotation marks and citations omitted).

1 “The rule is well established that the government in a conspiracy case may submit
2 proof on the full scope of the conspiracy; it is not limited in its proof to the overt acts
3 alleged in the indictment.” *United States v. Rizk*, 660 F.3d 1125, 1131 (9th Cir. 2011).

4 **III. ANALYSIS**

5 **A. Evidence Related to Sex Trafficking or Child Sex Trafficking**

6 Defendants first argue that allowing the Government to present “[e]vidence
7 suggesting that Backpage ads were linked to sex trafficking or child-sex trafficking would
8 be profoundly prejudicial and lack any probative value.” (Doc. 908 at 3.) Defendants point
9 out that sex trafficking and child sex trafficking are not elements of the charged offenses
10 under the Travel Act. Instead, the Travel Act merely requires that the Government prove
11 that Defendants intended to “promote, manage, establish, carry on, or facilitate the
12 promotion, management or carrying on” of prostitution offenses. 18 U.S.C. §§
13 1952(a)(3)(A), (b). Thus, Defendants argue that the evidence has no probative value and
14 instead “would only serve to mislead the jurors and provide them with an extra-judicial
15 basis to convict Defendants.” (*Id.* at 5.) Lastly, Defendants argue that allowing the
16 Government to admit evidence of sex trafficking and child sex trafficking through their
17 website would result in “trials within a trial.” (*Id.* at 5-6.) In response, the Government
18 argues that sex trafficking and child sex trafficking are both types of prostitution with both
19 crimes requiring the victim to engage in sex for financial gain. (Doc. 961 at 4 (citing 18
20 U.S.C. § 1591)).

21 The Court agrees with the Government’s position. Sex trafficking and child sex
22 trafficking are, by definition, both forms of prostitution. Both are simply a subset of the
23 crime. Sex trafficking and child sex trafficking require victims to engage in sex in exchange
24 for payment, and the Government must prove that Defendants intended to facilitate
25 prostitution through Backpage.com. Evidence that tends to prove that Defendants were
26 aware that Backpage.com was being used to facilitate sex trafficking and child sex
27 trafficking are extremely probative to show notice to Defendants that the website was being
28 used for illegal purposes. While the prejudicial value to Defendants is high, it does not

1 substantially outweigh the probative value of the evidence which is also very high. *See*
2 *United States v. LeMay*, 260 F.3d 1018, 1026 (9th Cir. 2001) (“All evidence introduced
3 against a criminal defendant might be said to be prejudicial if it tends to prove the
4 prosecution's case.”). Of course, the Court will not allow the Government to linger on the
5 details of the abuse sex trafficking victims suffered as a result of being trafficked.¹
6 However, the Court will allow evidence of the fact that people were trafficked using
7 Backpage.com at trial subject to specific objections from Defendants.

8 **B. Evidence of Crimes Committed by Third Parties**

9 Defendants also urge the Court to preclude evidence of crimes committed by third
10 parties.² Defendants argue the fact that violent crimes were perpetrated against those
11 advertising on Backpage.com has nothing to do with Defendants or whether they violated
12 the Travel Act by facilitating prostitution. (Doc. 908 at 6-7.) Defendants urge the Court to
13 preclude this evidence as irrelevant and unduly prejudicial. They move the Court for an
14 order “limiting the testimony of such individuals to those facts relevant to the Travel Act”
15 charges. (*Id.* at 9.) In support, Defendants discuss several cases which they purport support
16 their argument that the evidence of other crimes should be excluded. (Doc. 908 at 7-8
17 (citing *United States v. Bradley*, 5 F.3d 1317, 1319-22 (9th Cir. 1993); *United States v.*
18 *Gonzalez-Flores*, 418 F.3d 1093, 1098-99 (9th Cir. 2005); *United States v. Hitt*, 981 F.2d
19 422, 423-425 (9th Cir. 1992)).) The Government’s Response argues that the evidence is
20 relevant because “it shows Defendants were placed on notice and knew the website was a
21 hub for prostitution activity and their actions following the notice show that rather than try
22 to stop it, they took steps to promote and facilitate the unlawful activity.” (Doc. 961 at 6.)

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24 ¹ *See United States v. Garcia De Leon*, 137 F. App’x 965, 966 (9th Cir. 2005) (finding that
25 the district court did not abuse its discretion when it ruled that the testimony of sex
26 trafficking victims was not unduly prejudicial, especially since the government “was
precluded from dwelling on the details of the abuse.”).

27 ² The Court is also in receipt of and has considered the Government’s Motion to Admit
28 Evidence of Murders Implicating Backpage. (Doc. 920.) The Court will address
Defendants’ arguments that the Court should preclude evidence of third-party murders in
that order.

1 The Government contends that the cases cited by Defendants are easily distinguishable
2 because they involve crimes where the Government did not need to prove the knowledge
3 or intent of a defendant.

4 Generally, the Court agrees that the crimes of third parties are only relevant to the
5 extent that they gave Defendants' notice that prostitutes were advertising on
6 Backpage.com. However, the specific details of crimes committed by third parties are
7 irrelevant to whether Defendants violated the Travel Act, and in most instances, evidence
8 of such third-party crimes is likely improper. But without reference to specific contexts
9 where the Government intends to introduce such evidence, the Court will not categorically
10 conclude that all evidence of crimes committed by third parties is inadmissible. If the
11 Government attempts to introduce such evidence at trial, it will only be admitted to the
12 extent that it gave Defendants notice that prostitutes were utilizing Backpage.com, and the
13 Government will not be allowed to introduce evidence showing the details of the crimes.
14 As to the evidence of third-party murders, as the Court mentioned above, the Court will
15 address those arguments in a separate order.

16 Defendants also seek to limit the scope of testimony of witnesses involved in
17 prostitution and seek an order precluding the Government from introducing lengthy
18 testimony regarding the witnesses' lifestyle. The Court will not allow the Government to
19 introduce lengthy testimony from witnesses who were engaged in prostitution about their
20 lives, lifestyles, or other details of their time working as prostitutes. Testimony from people
21 involved in prostitution is only relevant as it relates to their use of Backpage.com and notice
22 to Defendants that prostitutes were using their website. Testimony concerning the lifestyle
23 and impact that prostitution had on witnesses' lives is irrelevant to the crimes charged and
24 may unduly prejudice Defendants. However, prior to using the phrase "a day in the life" in
25 the response, the Government described areas of testimony that would be relevant and
26 admissible. (Doc. 961 at 5.) Those areas included how ads were created, drafted, edited,
27 and paid for. That information is all relevant to the Government's theories behind the
28 conspiracy discussed in other motions, including moderation and money laundering. The

1 Government will not be allowed to introduce lengthy testimony of their time as prostitutes
2 pursuant to Rules 401 and 403, Fed. R. Evid.

3 **C. Third Party's Travel Act Violation from 1987**

4 Defendants urge the Court to preclude evidence of a Travel Act conviction from
5 1987 from an individual unrelated to Backpage. (Doc. 908 at 9.) In response, the
6 Government states that it does not intend to introduce this evidence at trial. (Doc. 961 at
7 2.) Thus, Defendants' request is moot.

8 **D. Evidence of Prostitution Ads in Printed Publications**

9 Lastly, Defendants ask the Court to preclude evidence related to the Government's
10 allegation in the Indictment that publications within the Village Voice Media Holding
11 newspaper routinely featured illegal prostitution ads because evidence of this fact is not
12 relevant, is prejudicial, would confuse jurors, and waste time at trial. (Doc. 908 at 10.) In
13 response, the Government asserts that it does not intend to introduce ads from print
14 publications at trial. (Doc. 961 at 2.) Accordingly, this request is also moot.

15 **IV. CONCLUSION**

16 Accordingly,

17 **IT IS ORDERED** that Defendants' Motion in Limine to Preclude Presentation of
18 Certain Evidence is granted in part and denied in part. (Doc. 908.) The motion is granted
19 to preclude testimony from people engaged in prostitution regarding the details of their
20 lifestyle except as it relates to their use of Backpage.com. The motion is also granted to
21 preclude evidence related to details of crimes committed by third parties, evidence of a
22 third party's Travel Act violation from 1987, and evidence of prostitution ads from print
23 publications. The rest of Defendants' motion is denied.

24 Dated this 7th day of May, 2021.

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27 Honorable Susan M. Brnovich
28 United States District Judge