

FEB 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROY COLINA ALIVIO,

Defendant - Appellant.

No. 08-50489

D.C. No. 2:07-cr-00243-RGK

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Argued and Submitted February 5, 2010  
Pasadena, California

Before: SCHROEDER, FISHER and N.R. SMITH, Circuit Judges.

This is an appeal from a jury conviction of six counts of subscribing to a false income tax return in violation of 26 U.S.C. § 7206(1). The only issue on appeal is whether the district court abused its discretion by allowing testimony concerning defendant's gambling activities.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The gambling evidence was clearly relevant to the issues in the case under Federal Rule of Evidence 401. The district court handled the evidence in a manner such that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice under Federal Rule of Evidence 403. There was, therefore, no abuse of discretion. *See United States v. Hinkson*, 585 F.3d 1247, 1251 (9th Cir. 2009) (en banc).

**AFFIRMED.**