

JUN 17 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JERRY HEROLD MIDDLE RIDER,</p> <p>Defendant - Appellant.</p>

No. 12-30207

D.C. No. 4:11-cr-00090-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted June 10, 2013**

Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

Jerry Herold Middle Rider appeals from the district court’s judgment and challenges his jury-trial conviction for assault resulting in serious bodily injury, in violation of 18 U.S.C. §§ 1153(a) and 113(a)(6). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Middle Rider contends that the district court erroneously admitted the testimony of a battered women's shelter volunteer regarding statements the victim made to her when the victim arrived at the shelter because it was hearsay. We review the district court's evidentiary rulings for abuse of discretion, and, if hearsay testimony was erroneously admitted, we review whether the error was harmless beyond a reasonable doubt. *See United States v. Payne*, 944 F.2d 1458, 1472 (9th Cir. 1991). The record reflects that the challenged testimony was not hearsay; it was properly admitted to show its effect on the listener, rather than the truth of the matter asserted. *See id.* Moreover, any error in admitting the testimony was harmless in light of other evidence presented at trial. *See id.* at 1473.

AFFIRMED.