

JUN 10 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DONALD CARL SALOIS,

Defendant - Appellant.

No. 13-30145

D.C. No. 4:12-cr-00052-DLC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, Chief District Judge, Presiding

Argued and Submitted June 3, 2014
Seattle, Washington

Before: GOODWIN, McKEOWN, and WATFORD, Circuit Judges.

Donald Salois appeals the district court’s judgement following his jury conviction for Aggravated Sexual Abuse in violation of 18 U.S.C. §§ 1153(a) and 2241(a)(1), assigning error to two evidentiary rulings. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court’s

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

evidentiary rulings, and de novo whether an evidentiary issue rises to the level of a constitutional violation. *United States v. Pineda-Doval*, 614 F.3d 1019, 1031-32 (9th Cir. 2010). We affirm.

The district court did not abuse its discretion in admitting evidence of Salois's prior acts of sexual misconduct because it properly determined that the risk of prejudice did not outweigh the probative value of the evidence. *See* Fed. R. Evid. 403, 413; *United States v. LeMay*, 260 F.3d 1018, 1027-28 (9th Cir. 2001) (describing non-exclusive factors that courts should consider in making that determination). *LeMay* also forecloses Salois's constitutional arguments. *See* 260 F.3d at 1026-31.

The district court did not err in excluding evidence of prior sexual acts between Salois and the victim because it properly determined that the risk of prejudice and other legitimate concerns outweighed the probative value of the evidence. *See* Fed. R. Evid. 403, 412; *Wood v. Alaska*, 957 F.2d 1544, 1550 (9th Cir. 1992) (“Because trial judges have broad discretion both to determine relevance and to determine whether prejudicial effect or other concerns outweigh the probative value of the evidence, we will find a [constitutional] violation only if we conclude that the trial court abused its discretion.”).

AFFIRMED.