

SEP 24 2014

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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NOT FOR PUBLICATION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.

OUDOM SOMEE,

Defendant - Appellant.

No. 13-10404

D.C. No. 2:10-cr-00273-MMD-
GWF-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda Du, District Judge, Presiding

Submitted September 10, 2014**
San Francisco, California

Before: BEA, IKUTA, and HURWITZ, Circuit Judges.

Oudom Somee was charged with conspiracy to recruit straw buyers for real property, help the buyers fill out fraudulent mortgage applications to obtain favorable rates, and transfer some of the money escrowed during closings into bank accounts

* 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).

Somee controlled. Somee appeals his convictions for mail fraud, wire fraud, bank fraud, and conspiracy. We have jurisdiction under 28 U.S.C. § 1291, and affirm.

The district court excluded Somee's expert witness, Dr. Kinsora, from testifying about Somee's claimed diminished mental capacity. The court's ruling was based on two grounds: first, Somee's failure to provide a description of "the witness's opinion, the bases and reasons for those opinions, and the witness's qualifications[.]" as required by Federal Rule of Criminal Procedure 16; second, Somee's failure to demonstrate the reliability and soundness of the methodology employed by Dr. Kinsora under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). On appeal, Somee provides no argument that the district court erred in its Rule 16 ruling. The issue is therefore waived. This court reviews "only issues which are argued specifically and distinctly in a party's opening brief. We will not manufacture arguments for an appellant" *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) (citations omitted). Failure to comply with Rule 16 was an independent and sufficient basis for exclusion of Dr. Kinsora's proposed testimony.

Somee also claims that the district court erred by not giving his proposed jury instructions on diminished capacity. We conclude the district court did not abuse its discretion, because the district court's conclusion that there was insufficient evidence

to warrant such instructions was not illogical, implausible, or unsupported by the record. *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc). Somee's testimony about his childhood head injury and his poor English skills did not suggest he was incapable of forming the requisite specific intent to commit the crimes.

AFFIRMED.