

SEP 25 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANNY ALFRED FONTANA,

Petitioner - Appellant,

v.

FRANK X. CHAVEZ, Warden;
ATTORNEY GENERAL FOR THE
STATE OF CALIFORNIA,

Respondents - Appellees.

No. 12-16307

D.C. No. 3:11-cv-03701-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Argued and Submitted September 9, 2014
San Francisco, California

Before: REINHARDT, GOULD, and BERZON, Circuit Judges.

On the issues certified for appeal to this court, Petitioner contends that the California trial court violated his due process right to present a defense and Sixth Amendment right to cross-examine adverse witnesses. The California Supreme

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Court rejected these claims. Assuming constitutional error, we hold that the trial court's exclusion of evidence related to the victim's consensual sex with her boyfriend was harmless under *Brecht v. Abrahamson*, 507 U.S. 619 (1993).

AFFIRMED.