

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 22 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT JIM, AKA Robert Slim Jim,

Defendant-Appellant.

No. 21-10212

D.C. No.

3:18-cr-08225-DGC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted September 20, 2022**
San Francisco, California

Before: GRABER, FRIEDLAND, and SUNG, Circuit Judges.

Robert Jim appeals his jury conviction and life sentence after being found guilty of two counts of aggravated sexual abuse of a child under 18 U.S.C. §§ 1153, 2241(c), 2246, and 2247; and two counts of an offense by a registered sex offender under 18 U.S.C. §§ 2241(c) and 2260A. We have jurisdiction under 28

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

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

U.S.C. § 1291, and we affirm.

1. The district court did not abuse its discretion by admitting evidence of Jim’s prior sexual abuse of his daughter and his resulting conviction. The court properly engaged in a “searching inquiry,” which included consideration of the five, non-exclusive factors identified in *United States v. LeMay*, 260 F.3d 1018, 1028 (9th Cir. 2001). Notably, the prior abuse and the charged offenses were similar, both involving sexual abuse of a minor family member coerced into silence by Jim. The evidence was relevant to bolster the credibility of the child victims, which Jim attacked. *See id.* at 1028–30. The evidence was reliable because Jim confessed to at least one of the prior incidents of abuse of his daughter and was convicted. *See id.* at 1029. Other factors were neutral or favored admission.

Finally, the record shows that the district court exercised discretion “in a careful and judicious manner.”¹ *Id.* at 1028.

2. Even assuming that Jim preserved his objection to the admission of a prior act of sexual abuse—the “ATV incident”—that did not result in a conviction, the district court did not abuse its discretion. Several *LeMay* factors supported admission, including the similarity, frequency, and lack of intervening circumstances in Jim’s pattern of sexually abusing young relatives. Further, the

¹ Although the district court admitted this conviction, it excluded evidence of an older conviction, finding it too dissimilar, remote, unnecessary, and prejudicial.

district court considered the relevance of the evidence and “struck a careful balance between [the defendant’s] rights and the clear intent of Congress that evidence of prior similar acts be admitted in child molestation prosecutions.” *See id.* at 1030.

3. The district court did not abuse its discretion in excluding evidence that Jim argued was necessary for his defense. The district court provided a “rational justification” for exclusion, *see Crane v. Kentucky*, 476 U.S. 683, 691 (1986), finding that the evidence was only marginally relevant and violated Federal Rule of Evidence 412(a)(1)’s ban on evidence of a victim’s “other sexual behavior.” Because the evidence that Jim sought to present is tenuous and undercuts rather than “squarely prove[s]” his theory of being framed, he cannot show that his constitutional rights were violated. *See Holmes v. South Carolina*, 547 U.S. 319, 330 (2006) (district judges may “focus the trial . . . by excluding evidence that has only a very weak logical connection to the central issues”).

4. Because none of the district court’s evidentiary rulings was an abuse of discretion, Jim certainly cannot show “multiple errors” with a “cumulative effect” that renders the trial fundamentally unfair. *See United States v. Preston*, 873 F.3d 829, 835 (9th Cir. 2017).

5. Sufficient evidence supported Jim’s convictions. *See United States v. Bachmeier*, 8 F.4th 1059, 1062 (9th Cir. 2021) (“We review challenges to the sufficiency of evidence de novo.”). When assessing the sufficiency of the

evidence, inconsistent testimony must be resolved in favor of the prosecution, “even if it does not affirmatively appear [resolved that way] in the record.” *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc) (internal quotation marks omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 326 (1979)). Viewing the record that way, we hold that a rational juror could have found guilt beyond a reasonable doubt. *See id.* (“[A] reviewing court may not ‘ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt,’ . . . only whether ‘*any*’ rational trier of fact could have made that finding.” (quoting *Jackson*, 443 U.S. at 318–19)).

6. We take no position on Jim’s argument that his defense counsel was ineffective for failing to file a motion for judgment of acquittal. *See* Fed. R. Crim. P. 29. Rather, we decline to address the merits of this claim on direct appeal. *See United States v. Rahman*, 642 F.3d 1257, 1259–60 (9th Cir. 2011) (holding that, ordinarily, we do not consider a claim of ineffective assistance of counsel on direct appeal).

7. Finally, despite Jim’s age, his life sentence is reasonable. Jim argues that the district court did not engage in the required “individualized assessment” at sentencing. We disagree. Because the district court stated the correct sentencing guidelines range, we review the imposed sentence for abuse of discretion. *See United States v. Martinez-Lopez*, 864 F.3d 1034, 1043–44 (9th Cir. 2017) (en

banc) (citing *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc)). In sentencing Jim, the district judge explicitly considered the 18 U.S.C. § 3553(a) sentencing factors. Jim fails to show which mitigating factors would have affected his sentencing. We recognize the gravity of Jim's sentence but cannot hold that the district court abused its discretion.

AFFIRMED.