

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-1224SD

United States of America,	*	
	*	
Appellee,	*	Appeal from the United States
	*	District Court for the District
v.	*	of South Dakota.
	*	
David Harry Flute, Sr.,	*	[UNPUBLISHED]
	*	
Appellant.	*	

Submitted: October 22, 1998
Filed: October 28, 1998

Before FAGG, ROSS, and WOLLMAN, Circuit Judges.

PER CURIAM.

David Harry Flute, Sr., appeals his convictions for aggravated sexual abuse. See 18 U.S.C. §§ 1153; 2241(a); 2246(2)(A)-(B) (1994). Flute contends the evidence is insufficient to support his convictions. In presenting its case to the jury, the Government offered the testimony of two eyewitnesses, two physicians who examined the victim following Flute's attack, a criminologist, and the victim herself. After reviewing the record, we are satisfied sufficient evidence exists from which a reasonable jury could find Flute guilty beyond a reasonable doubt. See United States v. Eagle, 133 F.3d 608, 610 (8th Cir. 1998). Flute also argues the district court erroneously denied his motion for a continuance after a subpoenaed witness failed to

report. The district court allowed Flute to make an offer of proof, and in a telephone conference the potential witness testified he saw a handwritten document in which the witness believed the victim sought to dismiss the charges against Flute. The witness did not have the document, and when he was unable to elaborate on when he saw it, what it said, and where it was, the district court concluded the testimony was irrelevant and denied Flute's motion. Having reviewed the record, we find no abuse of discretion in this ruling. We also conclude the district court did not abuse its discretion when it denied Flute's pre-trial motion to introduce evidence that the victim had falsely accused others of sexual abuse. See United States v. Bartlett, 856 F.2d 1071, 1087-89 (8th Cir. 1988).

We affirm Flute's convictions.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.