

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 25-CR-181

ISAIAS R. CUPINO, JR.,

Defendant.

**ORDER GRANTING GOVERNMENT’S MOTION IN LIMINE
AND DENYING DEFENDANT’S MOTION IN LIMINE**

Isaias R. Cupino, Jr., is charged in an eight-count second superseding indictment with producing, transporting, and possessing child pornography of two pre-pubescent children, identified as Child Victim-1 and Child Victim-2. Trial is set to begin on April 20, 2026, and the case is before the court on cross motions in limine focused on the admissibility of a number of images and videos that the parties agree do not themselves constitute child pornography. The government argues that the images and videos are relevant and probative. The defense claims they are irrelevant and pose an overwhelming risk of unfair prejudice, confusion, and misleading the jury.

Having viewed the images and videos, the court concludes the evidence is relevant and its probative value is not substantially outweighed by unfair prejudice or the risk of confusing or misleading the jury. To minimize such risk, the court will provide a cautionary instruction to the jury and limit the government’s offering to representative samples of the images and videos, supplemented by testimony as to the number of additional images and videos showing similar depictions.

Cupino, a 65-year-old family practice physician at the time of his arrest, is the father of Child Victim-1, a male who was born in October 2023 through a surrogate mother. The alleged child pornography, which forms the basis of the first seven counts of the indictment, consists of digital pictures and movie files featuring Child Victim-1. Dr. Cupino is alleged to have used an Apple iPhone to produce digital pictures and movie files depicting the lascivious exhibition of Child Victim-1's genitals, pubic area, and/or anus. The depictions described in Count One are alleged to have been taken on or about October 18, 2023, when the child was less than a month old, and Counts Two through Five on April 10, 2025, and July 12, 2025, when the child was still less than two.

Count Six charges Dr. Cupino with transporting the child pornography videos he is alleged to have produced in Count Five. The transporting allegedly occurred when Dr. Cupino uploaded the videos to the private/non-public portion of a Facebook account he created and was administering in Child Victim-1's name, as opposed to his own Facebook account. Facebook flagged the upload and sent a CyberTip to the National Center for Missing and Exploited Children (NCMEC). NCMEC then notified law enforcement, which determined the upload originated from Dr. Cupino's residence in Oconto Falls, Wisconsin, which in turn led to the execution of a warrant for Dr. Cupino's home and seizure of his electronic devices. The forensic analysis of a Western Digital hard drive seized from Dr. Cupino's home revealed images of another child, Child Victim-2 (a prepubescent female). These images form the basis of the possession of child pornography charge in Count Eight. According to the indictment, the images are of Child Victim-2 exposing her breasts, pubic area, and anus.

In addition to the images and videos that form the basis of the eight counts in the indictment, the forensic analyst also found two series of images and videos on Dr. Cupino's iPhone

that the government seeks leave to introduce as evidence at trial. The first series of images and videos show Child Victim-1 interacting with a life-sized female adult sex doll (with anatomical breasts, nipples, and a vaginal opening) that Dr. Cupino had apparently purchased. Some of the videos documented the arrival of the doll in a crate and Dr. Cupino's unpacking of it, complete with an accompanying narrative where he states "she's not in a cage anymore." The videos of Child Victim-1 interacting with the doll show the child kissing and stroking the doll's legs. In one video, the child is shown standing between the robed doll's legs making movements that the government describes as "thrusting his pelvis as if simulating sexual intercourse." Dkt. No. 31 at 6. The second series of images and videos are of Dr. Cupino holding Child Victim-1 and performing open-mouth kisses. In some, Dr. Cupino expels a liquid from his mouth into Child Victim-1's mouth and in others he extends his tongue for Child Victim-1 to suck on. The government's motion in limine seeks a pretrial ruling that the two series of images and videos are admissible at trial. The defense's motion seeks a ruling that they are not.

An essential element of each of the child pornography counts against Dr. Cupino is that the material he produced, transported, and possessed depicts a child engaged in "sexually explicit conduct." "Sexually explicit conduct" is defined as "actual or simulated –

- (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (ii) bestiality;
- (iii) masturbation;
- (iv) sadistic or masochistic abuse; or
- (v) lascivious exhibition of the anus, genitals, or pubic area of any person.

18 U.S.C. § 2256(a)(2)(A). The government contends that that depictions of Child Victim-1 and 2 that form the basis of the charges in the indictment constitute the "lascivious exhibition of the anus, genitals, or pubic area" of the two children. The defense, on the other hand, contends that the depictions do not constitute child pornography because they are not lascivious. In support of

this defense, Dr. Cupino’s attorney has indicated an intent to call as expert witnesses two physicians to testify as to the nature and scope of proper medical examinations of children.

According to the indictment, the images and videos Dr. Cupino is alleged to have produced clearly show the anus, genitals, and/or pubic areas of the two children. But as the Seventh Circuit has explained, “more than nudity is required to make an image ‘lascivious.’” *United States v. Miller*, 829 F.3d 519, 524 (7th Cir. 2016) (citing *United States v. Griesbach*, 540 F.3d 654, 656 (7th Cir. 2008); *United States v. Russell*, 662 F.3d 831, 843 (7th Cir. 2011)). Instead, “the focus of the image must be on the genitals [anus, or pubic area] or the image must be otherwise sexually suggestive.” *Griesbach*, 540 F.3d at 656.

In determining whether the exhibition of the anus, genitals, or pubic area of a child is lascivious, the factfinder must look first to the images or videos themselves. *Miller*, 829 F.3d at 525. There must be an exhibition of the anus, genitals, or pubic area, meaning that nude anus, genitals, or pubic area must be visible. *Id.* But, again, mere nudity is not enough. Otherwise, “the statute would criminalize a mother taking a picture of her child in the bathtub or a doctor taking a picture of a minor patient’s pubic area for a medical diagnosis.” *Id.* “In both of those situations,” *Miller* explained, “the creator may be intending to take a photograph of an “exhibition” of the minor’s pubic area, but not a ‘lascivious’ one.” *Id.* at 525–26. For a nude image of those areas of a child’s body to be found “lascivious,” it must be sexually suggestive or intended to arouse sexual desire. As a result, the intent of the creator of the depiction is a relevant consideration in deciding whether the exhibition is lascivious. “[W]hile the content of the images themselves must remain the ‘primary focus’ in determining lasciviousness, ‘[s]ubjective intent—particularly of the creator—is a relevant, and quite probative consideration.” *United States v. Porter*, 114 F.4th 931, 937 (7th Cir. 2024) (quoting *Miller*, 829 F.3d at 526) (emphasis original).

For most people, a nude picture of an infant or toddler would not be sexually suggestive or arouse sexual desire. But in deciding whether a depiction is sexually suggestive or arouses sexual desire, the question is not whether it would have such an effect on most people. The question is what impact it would have, or is intended to have, on the viewer, especially the creator. To answer that question, the jury will have to see more than the depictions themselves. “Fact finders are not constrained . . . to the four corners of these videos to find that they were lascivious. Instead, the finder of fact may look to the creator’s intent in making these videos” *Miller*, 829 F.3d at 525 (citing *Russell*, 662 F.3d at 843).

The evidence the government seeks to offer is relevant to Dr. Cupino’s intent in producing the images and videos that are alleged to constitute child pornography. Life-sized sex dolls are apparently used to act out sexual fantasies. Dr. Cupino may have obtained the doll to act out his own sexual fantasies, which is not illegal. But the fact that he repeatedly videoed Child Victim-1 interacting with the doll and seemed to encourage the interaction gives rise to the inference that he was trying to teach, or model for the child, sexual conduct. If so, a jury could conclude that he believes that infants and toddlers can be taught to engage in sexual behavior and thereby provide the context in which the jury could further conclude that the images of Child Victim’s anus, genitals, and pubic area he produced with his iPhone were intended to be sexually suggestive or arousing. The video showing Child Victim-1 engaging in behavior that the government describes as “thrusting his pelvis as if simulating sexual intercourse” gives rise to the inference, assuming the jury agrees with the government’s characterization of the behavior, that someone had modeled that behavior for him. A jury could conclude from their common experience that it is not the kind of behavior that a toddler would naturally undertake. Again, this evidence provides the context in which the jury will need to assess the alleged child pornography to decide whether it constitutes

the lascivious exhibition of the anus, genitals, and/or pubic areas of Child Victim-1 and Child Victim-2.

The same is true of the series of images and videos depicting Dr. Cupino kissing Child Victim-1. Kissing one's child can be a sign of fatherly affection. But kissing can also serve as a prelude to sexual activity. The kind of full, open-mouth kissing Dr. Cupino engaged in with Child Victim-1 appears to resemble, if anything, the latter. The additional features, including expelling liquid from his mouth into the mouth of Child Victim-1 and having Child-Victim-1 suck on his tongue only strengthen the inference that Dr. Cupino was attempting to teach, even program, the child to engage in sexual activity. Here, again, the evidence is necessary to provide the context for the jury to determine whether the images and videos exhibiting the children's anus, genitals, and pubic area are lascivious and thus constitute child pornography.

For these reasons, the challenged evidence is directly relevant to an essential element of the crimes charged. Even evidence that is relevant should be excluded, however, "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. Here, the probative value of the evidence is great. A family physician, such as Dr. Cupino, could have medical reasons to examine a child's body, including his or her anus, genitals, and pubic area, as the court has acknowledged. There might even be a reason to take a picture of such areas of the body to assist with medical diagnosis, though that would seem more unusual. Apparently, that is precisely the defense Dr. Cupino intends to assert in this case. Absent the images and video showing Dr. Cupino's encouraging Child Victim-1 to interact with the sex doll and his open-mouth kissing, the government's allegation that the images and videos of Child Victim-1 are lascivious, i.e., sexually suggestive or intended to arouse sexual desire, would be

substantially weakened. This would seem to be the very type of evidence the Seventh Circuit has said factfinders in such cases may and should consider.

The danger of unfair prejudice or jury confusion is also real. A juror may disapprove of sex dolls or open mouth kissing of a child and be inclined to find against Dr. Cupino based on that fact alone. But by carefully instructing the jury on the elements of the offense and the proper use of such evidence, making clear that Dr. Cupino is not on trial for kissing his child or allowing his child to interact with a sex doll and that those acts are not illegal, the court is satisfied that unfair prejudice and jury confusion can be eliminated. The government is also directed to limit its presentation of such evidence to representative samples of the relevant behavior and use a live witness to provide further details as to the number of images or videos that were found.

Ultimately, the court concludes that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice or the risk of confusing or misleading the jury. Whether the court analyzes the issue under Rule 403 or 404 of the Federal Rules of Evidence, the result is the same—the evidence is relevant and admissible. For the reasons stated herein and at the pretrial hearing, the government’s motion is **GRANTED** and the defendant’s motion is **DENIED**. So as to avoid pretrial publicity that may impact jury selection, the Clerk is directed to file this Order as “restricted” so that it will be accessible only to counsel for the parties until after trial.

SO ORDERED at Green Bay, Wisconsin this 9th day of April, 2026.



William C. Griesbach
United States District Judge