

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

September 26, 2011

Lyle W. Cayce
Clerk

No. 11-30099
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LARRY CAILLIER, II,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:10-CR-76-1

Before REAVLEY, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Larry Caillier, II, appeals from his guilty plea conviction for receiving child pornography, in violation of 18 U.S.C. § 2252A(a)(1)(A). The district court sentenced Caillier to 168 months of imprisonment, 15 years of supervised release, and registration as a sex offender. He argues on appeal that none of the four images he received on his cellular phone constituted child pornography and that he therefore pleaded guilty to a crime that was never committed. Because he has raised this argument for the first time on appeal, we review the issue only

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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for plain error. *Puckett v. United States*, 556 U.S. 129, 129 S. Ct. 1423, 1429 (2009); *United States v. Marek*, 238 F.3d 310, 315 (5th Cir. 2001) (en banc).

Caillier specifically asserts that the sole photograph showing the victim's genitals or pubic area does not qualify as the "lascivious exhibition of the genitals or pubic area of any person" for purposes of 18 U.S.C. § 2256(2)(A)(v) because the victim's genitals or pubic area is covered by clothing in the photograph, the focal point of the photograph is not the victim's genitals or pubic area, and the other aspects of the depiction in the photograph do not meet the relevant *Dost*¹ factors. *See United States v. Steen*, 634 F.3d 822, 826-27 (5th Cir. 2011) (analyzing *Dost* factors to determine whether depictions meet definition of lascivious exhibition of the genitals or pubic area). After examination of the evidence and analysis of the *Dost* factors, we conclude that Caillier has failed to show clear or obvious error as to this issue. *See Puckett*, 129 S. Ct. at 1429.

The district court's judgment is AFFIRMED.

¹ *United States v. Dost*, 636 F. Supp. 828, 832 (S.D. Cal. 1986).