

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

United States Court of Appeals
Fifth Circuit

FILED

May 14, 2009

No. 08-30689
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ALAN D BEVERS

Defendant-Appellant

Appeal from the United States District Court
for the Middle District of Louisiana
No. 3:07-CR-150-1

Before HIGGINBOTHAM, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:*

Alan D. Bevers appeals his conditional guilty plea conviction to 18 U.S.C. § 2251(a), sexual exploitation of a child. He argues that the factual basis of his plea did not establish that the victim engaged in “sexually explicit conduct” because the videotape in question did not depict a lascivious exhibition of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

minor's genitals or pubic area. We review the district court's factual finding for clear error.¹

Using the "*Dost* factors" adopted by this court to determine whether a visual depiction of a minor constitutes a "lascivious exhibition of the genitals or pubic area,"² the district court pointed to several pertinent facts: that the videotape focused on the fully nude genitalia of a female child taking a shower; captured the child's buttocks and breast; and was taped with the purpose of eliciting a sexual response from the viewer.

We cannot say that the district court's finding that the depiction at issue constituted a lascivious exhibition of the genitals or pubic area of the victim is clear error. The sexually explicit conduct element of § 2251(a) was met, and the factual basis is sufficient to support Bevers's plea.³

AFFIRMED.

¹ See *U.S. v. Reasor*, 418 F.3d 466, 474 (5th Cir. 2005); *U.S. v. Boudreau*, 250 F.3d 279, 283 (5th Cir. 2001).

² *U.S. v. Grimes*, 244 F.3d 375, 381 (5th Cir. 2001); see *U.S. v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986).

³ See FED. R. CRIM. P. 11(b)(3).