

United States Court of Appeals
For the Eighth Circuit

No. 26-1333

United States of America

Plaintiff - Appellee

v.

Cory Marvin Baker

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Central

Submitted: September 25, 2026
Filed: October 21, 2026

Before LOKEN, BENTON, and ERICKSON, Circuit Judges.

BENTON, Circuit Judge.

Cory Marvin Baker was convicted of attempted receipt of child pornography in violation of 18 U.S.C. §§ 2252A(a)(2) and (b)(1). He challenges the sufficiency of the evidence, the admission of his prior convictions for possession of child pornography and sexual exploitation of a minor, the admission of testimony about

the usual searches of people seeking child pornography, and the district court's¹ handling of a file of exhibits. Having jurisdiction under 18 U.S.C. § 1291, this court affirms.

Baker's probation officer found prohibited internet-capable devices at Baker's home. He had searched for terms like "young naked teen boys," narrowing the results by adding "boys," or "young." The devices also had cache images of young-looking people engaging in sex acts. (A device generates a cache image when opening a saved image or viewing an image on the internet.)

At trial, the district court admitted evidence of Baker's prior convictions for possession of child pornography and sexual exploitation of a minor. Without objection, the district court allowed Detective Andrew Morlan, who analyzed the devices, to testify about the usual searches of suspects seeking child pornography.

The district court gave counsel special instructions for handling a file of exhibits, which included the cache images. The court kept the exhibits in a separate red binder, which was opened only at the court's direction and closed immediately thereafter. Baker did not object to the instructions or the handling during trial. As the dissenting opinion notes, the government several times, the court at least twice, and defense counsel at least once called these exhibits "contraband."

I.

Baker argues the evidence was insufficient to convict for the intent and substantial step elements of attempted receipt of child pornography.

This court reviews sufficiency of the evidence de novo, "viewing evidence in the light most favorable to the government, resolving conflicts in the government's favor, and accepting all reasonable inferences that support the verdict." **United States v. Teague**, 646 F.3d 1119, 1121–22 (8th Cir. 2011). This court upholds the

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

verdict if “any interpretation of the evidence would allow a reasonable-minded jury to find the defendant guilty beyond a reasonable doubt.” *Id.* at 1122.

Baker argues the evidence shows only the intent to view adult pornography. His searches disprove this. He searched for terms like “young naked teen boys,” frequently focusing on the terms “boys,” or “young.” A reasonable jury could find that Baker narrowed his searches—sufficient evidence of intent to find child pornography.

As for the substantial step element, Baker had cache images on his devices of young-looking people engaging in sex acts. The ages of the (apparent) children in the cache images were unknown, but a reasonable jury could conclude they were child pornography. See *United States v. Morrissey*, 895 F.3d 541, 549 (8th Cir. 2018) (approving a jury finding that images were child pornography after viewing them). A reasonable jury could conclude the cache images showed repeated attempts to access child pornography, which is a substantial step. See *United States v. Hall*, 2026 WL 2566180, at *1 (8th Cir. Aug. 31, 2026) (repeatedly opening link to purported child pornography is a substantial step).

II.

Baker argues that the district court erred in admitting his prior convictions for possession of child pornography and sexual exploitation of a minor. This court reviews admission of evidence under Rule 404(b) for abuse of discretion. *United States v. Brown*, 88 F.4th 750, 757–58 (8th Cir. 2023). To be admissible under Rule 404(b), “evidence must be (1) relevant to a material issue raised at trial, (2) similar in kind and not overly remote in time to the crime charged, (3) supported by sufficient evidence to support a jury finding that the defendant committed the other act, and (4) of probative value not substantially outweighed by its prejudicial effect.” *United States v. Monds*, 945 F.3d 1049, 1052 (8th Cir. 2019). Because Rule 404(b) is a rule of inclusion, this court reverses only if evidence is introduced solely to show propensity toward criminal misconduct. See *United States v. Brandon*, 64 F.4th 1009, 1021 (8th Cir. 2023). At issue is whether Baker’s convictions were relevant,

similar in kind to the crime charged, and whether their probative value was not substantially outweighed by their prejudicial effect.

Baker's convictions were relevant to motive, intent, and knowledge. Possession of child pornography is relevant to establish a motive for possessing child pornography and rebut claims of accident or mistake. *See United States v. Stefanyuk*, 944 F.3d 761, 764 (8th Cir. 2019) (evidence of previous child pornography conviction relevant to show motive for receipt of child pornography); *United States v. Moberg*, 888 F.3d 966, 970 (8th Cir. 2018) (admissions that a defendant has viewed child pornography are "relevant to . . . show that he acted knowingly").

Baker's convictions were similar to the crime charged. *See United States v. Worthey*, 716 F.3d 1107, 1113 (8th Cir. 2013) ("[C]onvictions for receipt and possession of child pornography turn on essentially the same requirements and evidence."); *United States v. Brumfield*, 686 F.3d 960, 963 (8th Cir. 2012) (producing child pornography is similar to possession of child pornography).

The probative value of Baker's convictions is not substantially outweighed by unfair prejudice. "[A]ny prejudicial effect [is] lessened by the court's instruction to the jury to consider the evidence only to evaluate [the defendant's] state of mind or intent." *Brumfield*, 686 F.3d at 963. The district court gave that instruction. The court did not abuse its discretion by admitting Baker's convictions under Rule 404(b).

III.

According to Baker, Detective Morlan's testimony violated Rule 704(b) by testifying about the usual searches of people seeking child pornography, thus telling the jury Baker had the mental state required for the offense. Baker did not object, so this court reviews for plain error. *United States v. Broussard*, 87 F.4th 376, 379 (8th Cir. 2023).

Rule 704(b) prohibits opinions “about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged.” **Fed. R. Evid. 704(b)**. Detective Morlan testified that “when they are searching for ‘boy’ and ‘young’, I mean they are looking for young boys. They are not searching for adult boys.” Among other comments, he added “in this case, like I stated earlier, usually a suspect will—or defendants will search—start with adult pornography, and then they can’t get that sexual gratification from adult pornography, and then they will move on to—unfortunately to child.”

Detective Morlan described the usual searches of people seeking child pornography. While he does use the term “in this case,” the rest of his testimony makes clear he is referring generally to suspects in similar cases.

This testimony does not violate Rule 704(b). See *Diaz v. United States*, 602 U.S. 526, 536 (2024). In *Diaz*, an officer testified that most couriers know they are transporting drugs. *Id.* That statement did not violate Rule 704(b) because the issue of the defendant’s “mental state was left to the jury’s judgment.” *Id.* Here, Detective Morlan testified about the usual searches by defendants in similar cases. Since the issue of Baker’s “mental state was left to the jury’s judgment,” admitting this testimony was not an error, let alone a plain error. *Id.*

IV.

Asserting a violation of Rule 403, Baker complains about the district court’s handling of a file of exhibits in red binders and the references to them as “contraband.” **Fed. R. Evid. 403**. Baker did not object, so this court reviews for plain error. *Broussard*, 87 F.4th at 379.

A jury could find that the cache images were child pornography. *Morrissey*, 895 F.3d at 549. Since “[i]mages . . . depicting child pornography are by their very nature disturbing” it was not an error to keep those exhibits in a separate red folder and to establish a special procedure for handling them. See *United States v. Evans*, 802 F.3d 942, 946 (8th Cir. 2015).

As the dissenting opinion notes, the district court instructed the jury that statements by counsel were not evidence and statements by the court were not intended to suggest a verdict. “We presume that juries follow the court’s instructions.” *United States v. Smith*, 910 F.3d 1047, 1053 (8th Cir. 2018). The district court’s handling of this file of exhibits was not an error, let alone a plain error.

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The judgment is affirmed.

ERICKSON, Circuit Judge, dissenting.

During the final pretrial conference, the district court consulted with counsel about the presentation of certain exhibits in a separate red folder and called them “contraband” exhibits. The file and exhibits inside the red folder were referred to as “contraband exhibits” repeatedly throughout the trial: at least twice by the court, several times by the government, and at least once by defense counsel. Because defense counsel did not object at trial or ask for a jury instruction on the nature of the contents of the folder, Baker’s claim as to the handling of these trial exhibits, as noted by the Court, is subject to plain error review. The red folder at issue contained images marked by an examiner as suspected child sexual abuse material, images that were “of interest,” and screenshots of search results. The Court finds no prejudice in drawing the jury’s attention to the exhibits by placing them inside a red folder and identifying them as “contraband” on the ground that the general evidence instruction directed the jury to disregard statements of counsel and the court. I respectfully dissent.

The Court contends “special instructions” on the handling of the exhibit folder were given to the jury. The jury instructions, both preliminary and final, addressed statements of counsel, stating: “Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.” During preliminary

instructions, the district court told jurors, “[They] should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdicts should be.” Likewise in the final charge to the jury, the court stated, “Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.”

The limiting instruction given with the evidence informed the jurors that they may decide if the images were in fact found on Baker’s devices, not that they could decide if the images were unlawful to possess. The jury was not instructed on material issues such as the law applicable to possession of the exhibits contained within the folder; why the exhibits were being presented in a red folder; or the reason the exhibits were identified as contraband. The trial transcript shows that these omissions caused confusion, as the prosecutor referred to the “contraband exhibits” during her closing argument and then a few moments later referenced Baker looking for “contraband images that were prohibited under law.” While statements of counsel are not evidence, they may, and are intended by counsel to, help the jury interpret evidence.

I respectfully disagree with the Court’s view that the failure to clarify this unusual situation surrounding the exhibits was neither error nor plain error. The red color of the folder—a color commonly associated with danger or prohibited activity—when coupled with the use of the word “contraband” might very well have inserted confusion as to the law of the case and what issues the jury was empowered to decide. See United States v. Galimah, 758 F.3d 928, 930 (8th Cir. 2014) (noting jury instructions must, when taken as a whole, fairly and adequately represent the evidence and applicable law.). In this situation, the general evidence instruction and the charge to the jury were insufficient to ameliorate the harm. Because Baker’s intent to view images of child pornography was the primary fighting point in the case and central to his conviction, I would find plain error as to the handling of the exhibits, vacate the jury’s verdict, and remand for a new trial with proper instructions (if the court allows admission of the exhibits in the same manner) and presentation of the evidence.