

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 2:22-cr-53-SPC-NPM

RICHARD EDWARD BRILLHART

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**OPINION AND ORDER**

Before the Court is Defendant Richard Brillhart's Third Motion in Limine. (Doc. 140). The Government responded in opposition. (Doc. 147). For the reasons set forth below, the Court denies Brillhart's Motion.

In April and May 2021, NCMEC received several CyberTips concerning various email addresses associated with Brillhart. In August 2021, NCMEC received an additional CyberTip from Kik linked to Brillhart's email account luvemyng01@yahoo.com,<sup>1</sup> which was associated with the username "flped4you."

Law enforcement used subscriber data to connect one of the email addresses—reb3280@yahoo.com—to Brillhart and ultimately obtain a search warrant for Brillhart's apartment. In September 2021, law enforcement executed the warrant. During the search, law enforcement found a phone in

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<sup>1</sup> The Government's Response in Opposition says this email address is luvemyng01@yahoo.cpm (Doc. 147 at 4), but the Court presumes this is a typographical error.

Brillhart's bedroom containing videos and images depicting the sexual abuse of minors.

In December 2021, law enforcement obtained a search warrant for the Kik account "flped4you." Kik provided the contents of the account, which included a selfie and two videos of Brillhart, the subscriber name "Reb Reb,"<sup>2</sup> and a group chat that occurred in August 2021.

In this Kik group chat, "flped4you\_jaz" introduced himself in accordance with the group rules.<sup>3</sup> In fact, "flped4you\_jaz" introduced himself as "41 m pedo" seven times during the chat. (Doc. 144 at 7, 11, 13). Additionally, he said "[p]edofile [sic] here" and "I'm a pedofile [sic] . . . I'm being honest." (Doc. 144 at 7, 3).

In May 2022, Brillhart was indicted for both possession and distribution of child pornography in violation of [18 U.S.C. §§ 2252\(a\)\(4\)\(B\)](#) and (b)(2) and [18 U.S.C. §§ 2252\(a\)\(2\)](#) and (b)(1). The distribution count concerns conduct "on or about May 10, 2021" and the possession count concerns conduct "[f]rom on or about April 14, 2021, through on or about September 8, 2021." (Doc. 1 at 1).

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<sup>2</sup> This subscriber/user name has been associated with some of Brillhart's other accounts as well. (Doc. 147 at 3-4).

<sup>3</sup> The group rules stated newcomers should "Introduce yourself with your age & [sic] general location upon entry." (Doc. 144 at 3).

Brillhart now moves under [Fed. R. Evid. 403](#)<sup>4</sup> to exclude “any Kik images that depict the statement ‘HI IM A PEDOPHILE,’ or other references to ‘Pedophile’ or ‘Pedo’ . . . and any testimony or description of such material.” (Doc. 140 at 1).

A court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice.” [Fed. R. Evid. 403](#). “The term ‘unfair prejudice’ . . . speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged . . . [it] means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” [Old Chief v. United States](#), 519 U.S. 172, 180 (1997) (internal citations omitted).

Rule 403 does not create a “requirement that the government choose the least prejudicial method of proving its case.” [United States v. Dixon](#), 698 F.2d 445, 446 (11th Cir. 1983). Instead, exclusion under Rule 403 is an “extraordinary remedy which the district court should invoke sparingly.” [United States v. Dodds](#), 347 F.3d 893, 897 (11th Cir. 2002). The Court sees no reason to invoke it here.

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<sup>4</sup> Brillhart also cites to the due process clauses of the Fifth and Fourteenth Amendments in his opening paragraph, but then limits his argument to [Fed. R. Evid. 403](#). Accordingly, the Court limits its analysis to Rule 403.

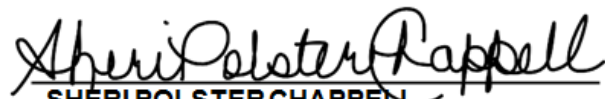
Rule 403 requires weighing probative value against unfair prejudice, and here the scales tip firmly in favor of probative value. The Government must prove that Brillhart knowingly distributed and knowingly possessed child pornography. The Kik chat shows Brillhart introducing himself as a “pedofile” during the timeframe charged in the indictment. Given the timing, nature, and circumstances surrounding Brillhart’s statements on Kik, his statements are highly probative, and any prejudice he might suffer pales in comparison.

Accordingly, it is now

**ORDERED:**

Defendant Richard Brillhart’s Third Motion in Limine (Doc. 140) is **DENIED.**

**DONE AND ORDERED** in Fort Myers, Florida on January 24, 2024.

  
**SHERI POLSTER CHAPPELL**  
**UNITED STATES DISTRICT JUDGE**

Copies: Counsel of Record