IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,	)	UNITED STATES' BRIEF
Appellant,	)	IN SUPPORT OF THE
	)	CERTIFIED ISSUES
v.	)	
	)	Crim. App. Dkt. No. 40134
	)	
Airman (E-2)	)	USCA Dkt. No. 25-0157/AF
ZACHARY C. ROCHA	)	
United States Air Force	)	11 June 2025
Appellee.	)	

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INDEX OF BRIEF

TABLE OF AUTHORITIES

SUPREME COURT OF THE UNITED STATES

COURT OF APPEALS FOR THE ARMED FORCES

SERVICE COURT OF CRIMINAL APPEALS

OTHER COURTS

STATUTES

OTHER AUTHORITIES

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TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

CERTIFIED ISSUES

I.

DID THE AIR FORCE COURT OF CRIMINAL APPEALS FAIL TO FOLLOW THIS COURT'S REMAND INSTRUCTION BY ANALYZING THE PURPORTED LAWRENCE V. TEXAS, 539 U.S. 558 (2003), LIBERTY INTEREST AS "MASTURBATION IN SOLITUDE, IN SECRET, AND IN PRIVATE," INSTEAD OF "PRIVATELY ENGAG[ING] IN SEXUAL ACTIVITY WITH A CHILDLIKE SEX DOLL"?

II.

DID THE AIR FORCE COURT OF CRIMINAL APPEALS ERR IN ITS APPLICATION OF LAWRENCE V. TEXAS, 539 U.S. 558 (2003) AND UNITED STATES V. MARCUM, 60 M.J. 198 (C.A.A.F. 2004) TO FIND APPELLEE'S CONVICTION FACTUALLY INSUFFICIENT?

RELEVANT AUTHORITIES

10 U.S.C. § 866(d)(1) (2019)

> *Cases appealed by accused*. In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

10 U.S.C. § 934 (2019):

> Though not specifically mentioned in this chapter [10 USCS §§ 801 et seq.], all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter [10 USCS §§ 801 et seq.] may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

Manual for Courts-Martial, United States, (MCM) IV, para. 104.b (2019 ed.):

> *Article 134—(Indecent conduct)*
>
> a. *Text of statute*. See paragraph 91.
>
> b. *Elements.*

(1) That the accused engaged in certain conduct;

(2) That the conduct was indecent; and

(3) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) was of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) "Indecent" means that form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(2) Indecent conduct includes offenses previously proscribed by "Indecent acts with another" except that the presence of another person is no longer required. For purposes of this offense, the words "conduct" and "act" are synonymous . . .

STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case under Article 66(d), UCMJ. This Court has jurisdiction over this matter under Article 67(a)(2), UCMJ.[1]

[1] Unless otherwise noted, all references to the UCMJ, punitive articles, Military Rules of Evidence, and the Manual, MCM, (2019 ed.).

STATEMENT OF THE CASE

A general court-martial convicted Appellee of one specification of indecent conduct for engaging in "sexual acts with a sex doll with the physical characteristics of a female child," in violation of Article 134, UCMJ. (JA 088.) The military judge sentenced Appellee to a bad conduct discharge, confinement for 90 days, forfeiture of all pay and allowances, and reduction to the grade of E-1. (Id.)

On appeal, Appellee raised eight assignments of error before the Air Force Court of Criminal Appeals (AFCCA). (JA 002.) AFCCA found for Appellee on his second assignment of error, concluding that he did not have fair notice that his conduct was punishable as indecent conduct. (Id.). AFCCA set aside the finding of guilty and the sentence and dismissed the charge and specification with prejudice. (Id.)

The Judge Advocate General of the Air Force certified for review the issue of whether the Article 134, UCMJ, offense of indecent conduct provided Appellee with fair notice that his conduct was prohibited. United States v. Rocha, No. 23-0134/AF, 2023 CAAF LEXIS 181, at *1 (C.A.A.F. Mar. 31, 2023).

This Court reversed AFCCA's decision, concluding that "the presidentially enumerated elements and definitions of Article 134 provide fair notice to servicemembers of ordinary intelligence that engaging in sexual acts with a lifelike

child sex doll falls squarely within the President's definition of indecent conduct." United States v. Rocha, 84 M.J. 346 (C.A.A.F. 2024). This Court remanded the case to AFCCA with instructions to, *inter alia*, "determine whether Appellee had a constitutionally protected liberty interest under Lawrence v. Texas, 539 U.S. 558 (2003), to privately engage in sexual activity with a childlike sex doll." Id. at 352.

AFCCA held that Appellee had a constitutionally protected liberty interest in "masturbation in solitude, in secret, and in private," and that his conviction for indecent conduct was factually insufficient. (JA 034, 041.) AFCCA set aside the finding of guilty and dismissed the charge and specification with prejudice. (JA 042.) After AFCCA denied reconsideration, (JA 084), Maj Gen Rebecca R. Vernon, performing the duties of The Judge Advocate General, certified this case for review.

STATEMENT OF THE FACTS

Adele the Child Sex Doll

In April 2019, after looking for sex dolls for about a week, Appellee purchased a childlike sex doll from an online merchant based in China. (JA 117-18, 198-99, 241.) Believing he "should ship [the doll] somewhere else because it's on a military base and it's obvious it's not good to have something like that on a military base," Appellee asked a fellow airman, SrA CS, if he could have the

package shipped to CS's off-base residence. (JA 116-17, 149-150.) The doll was shipped from Shenzen, China, on 24 April 2019. (JA 241.)

After receiving the package from SrA CS, Appellee brought the doll to his dorm room on base, dressed it, and named it "Adele" after a female friend from middle school. (JA 154.) "Adele" was "the size of a toddler," (JA 127, 141), made of silicone, (JA 161), and anatomically correct in that it had a mouth, anal, and vaginal cavities. (JA 161, 177.) She also had a function that made moaning noises, although Appellee claimed not to have used it. (JA 181.)

On 20 May 2019, during a random health and welfare inspection of Appellee's dorm building, command representatives inspecting Appellee's room found "Adele" and reported it to law enforcement. (JA 126-131.)

At trial, the factfinder heard from various people about the physical appearance of "Adele." The First Sergeant who first discovered "Adele" during the inspection testified that it was "very life like" and the "size of a toddler." (JA 127-28.) He was so "shocked" and "stunned" that his "flight response kind of set in," and he "left the room as soon as [he] could." (JA 130.) Similarly, the Office of Special Investigations (OSI) agent who responded to the scene testified that the doll "scared [him] because it kind of looked like a *child*." (JA 141, 144) (emphasis added). Finally, in a recorded interview with OSI that was played for the factfinder, Appellee described "Adele" as a child sex doll: "[I]t kind of seems

strange that I have, basically what is a *child sex doll*." (JA 203) (emphasis added).

He also proffered that others would perceive his possession of the doll as "weird":

> Appellee: Well, an outside perspective would see that as really weird.
>
> OSI: Why is it weird?
>
> OSI: Yeah.
>
> OSI: And why is weird wrong? Is there anything wrong with weird?
>
> Appellee: *It's a doll of a child.*
>
> OSI: Okay.
>
> Appellee: Right.
>
> OSI: So let me ask you this, when you ordered it, what-- how did it describe it?
>
> Appellee: I don't remember that.
>
> OSI: Does it say --
>
> Appellee: I don't remember.
>
> OSI: X amount of inches long, does it say child doll, like what's the descriptor? So you can kind of recognize this as a child shape, right?
>
> Appellee: Yeah, it never said anything about a child doll, but it is very -- *it is kind of obvious.*

(JA 159) (emphasis added). Appellee confirmed that he knew he was getting a child doll when he ordered it. (Id.)

Appellee's Sexual Activities with "Adele"

During his interview with OSI, Appellee admitted he purchased Adele to use as a sex doll. (JA 199.) Appellee admitted that he was "a little too excited" when he got the doll and did "very inappropriate" things with it that same day. (JA 173.) When asked to elaborate, Appellee admitted that he had vaginal and anal sex with "Adele" three times—starting the day he brought it to his room—but "[m]ostly up the butt, up the buttocks." (JA 177-178.)

When Appellee had sex with "Adele," he was "thinking about Lollies." (JA 252 at 2:03:16.) Appellee explained that "Lollies" are "characters depicting underage girls," that range between the ages of "8 to 12, but it can also go up to like 16, but really—it's not really an age range, it's more of a body type, like very petite, very petite." (JA 182-84.) According to Appellee, the body-type of the doll he ordered was the same as a "Lolli's" body, and "[fell] in line with what a Lolli would look like." (JA 196.) Appellee said that Adele was always meant to be like a Lolli—that was her purpose. (JA 197.)

Appellee stated that while he was first having sex with "Adele," he thought: "What if this was alive? What if this was real?" (JA 201.) Appellee claimed this made him "sad . . . [t]hat [he] would do something like that in real life" and caused him to "feel dirty," so he stopped. (Id.) When asked if he had been imagining "Adele" was "a real child" while penetrating her, Appellee responded

affirmatively. (Id.) Appellee had sex with "Adele" two more times—both times, he again found himself thinking of her as "real." (JA 201-02.) Appellee claimed he stopped when this occurred: "I felt bad because I did like it up until the point where I started thinking about if it were like, say, somebody's daughter." (JA 201-02, 252 at 2:04:58.) Later, when OSI asked if Appellee ever pictured "Adele" as real during sex and was "into it," Appellee asked if the agent meant "[r]eal as in like real child, somebody's daughter" before denying that he had been "into it." (JA 203, 252 at 2:07:22.)

Appellee is Convicted of Indecent Conduct

Appellee was charged with committing indecent conduct in violation of Article 134, UCMJ:

> In that AIRMAN ZACHARY C. ROCHA, United States Air Force, 726th Air Control Squadron, Mountain Home Air Force Base, Idaho, did, within the continental United States, on divers occasions between on or about 24 April 2019 and on or about 20 May 2019, commit indecent conduct, to wit: engaging in sexual acts with a sex doll with the physical characteristics of a female child, and that said conduct was of a nature to bring discredit upon the armed forces.

(JA 086.)

Five days before trial, the military judge asked the Government what aggravating circumstances it intended to use to prove the alleged conduct was indecent. (JA 268.) Trial counsel responded that the aggravating circumstances

included that the sexual acts took place in Appellee's dorm room on an Air Force installation, where the doll was brought "after being purchased online." (Id.) Appellee had the doll "shipped off base instead of on base because he knew having the doll on base would be discreditable to the service." (Id.) Citing Marcum, trial counsel emphasized that the military's prohibition on service discrediting conduct provided the framework for applying Lawrence v. Texas in the military context. (Id.)

On the first day of trial, Appellee moved to dismiss the indecent conduct specification for failure to state an offense, claiming that his conduct—which he described as "privately engaging in sexual acts with a sex doll"—was protected by Lawrence, that the military environment did not change the outcome, and that there were no circumstances that "[met] the requirements for aggravation." (JA 263.) The motion did not address the childlike characteristics of the sex doll or how that would affect the Lawrence analysis.

In response, the Government argued that Appellee's conduct was unprotected by Lawrence because he had "reached out into the stream of commerce to search online for, and to receive an anatomically correct child sex doll," and thereby "supported a market of exploitation" and "became a consumer of child sex products, promoting the exploitation of children." (JA 274.) That exploitation "destroy[ed] any claim of protection the Defense asserts in a liberty

interest." (Id.) Trial counsel then highlighted that the conduct occurred in a dorm room in a suite shared with another airman and that Appellee had sexual intercourse with the doll while thinking of children. That conduct was service discrediting and thus harmful to the military, and those military-specific factors meant there was no liberty interest in Appellee's actions. (JA 275.)

In denying the motion, the military judge found as fact that "[t]he doll was approximately 35 inches in length, *had the appearance of a child*, was an anatomically correct female doll, and had openings in the mouth, vagina, and anus." (JA 279) (emphasis added). He further found that Appellee "admitted to feeling bad" when having sex with the doll "because he had thoughts of the doll as a real child." (Id.) The judge noted that the specification alleged all elements of the offense, provided notice of the charge, and sufficiently protected Appellee against double jeopardy. (JA 281.) Finally, the judge found that aggravating circumstances did not need to be alleged in the indecent conduct specification and were "a question of fact to be determined by the finder of fact and not a basis for finding a specification deficient." (Id.)

After the Government rested its case, the defense moved for a finding of not guilty under R.C.M. 917. (JA 208.) Defense counsel argued that the Government had not proven any aggravating factor that took Appellee's conduct outside the realm of wholly private conduct. (Id.) In response, trial counsel argued that the

aggravating circumstances included that Appellee "reached out with a stream of commerce internationally to purchase a doll with the physical attributes of a child, including vaginal and anal cavity openings that he intended to have sexual intercourse with." (JA 210.) According to the Government, that Appellee had to reach out "to the other side of the earth" to procure the doll showed that a doll with those characteristics is not accepted in this society. (JA 212.) Trial counsel also proffered that Appellee brought the child sex doll onto an Air Force installation, had vaginal and anal intercourse with it in his dorm room, and showered with it in a shared common area. (JA 211.)

The military judge denied the R.C.M. 917 motion. (JA 217.) The military judge disagreed that many of trial counsel's proffered circumstances were aggravating. (JA 215.) But he found at least some evidence of an aggravating circumstance in that Appellee "engaged in sexual acts with a sex doll with the physical characteristics of a female child in order to simulate sexual acts with a minor." (JA 217.)

The military judge instructed the members that "[i]n the absence of an aggravating circumstance, private consensual sexual activity, including masturbation with or without any nonliving object, is not punishable as indecent conduct," and then instructed:

> The government has asserted the existence of the following aggravating circumstance to prove the alleged

> conduct is indecent: the accused engaged in sexual acts with a sex doll with the physical characteristics of a female child, *to simulate sexual acts with a minor.*
>
> To find the accused guilty of this offense, you must be convinced of the existence of this aggravating circumstance beyond a reasonable doubt. The accused's intent to simulate sexual acts with a minor may be inferred from circumstantial evidence, however, the drawing of this inference is not required. In deciding whether this asserted aggravating circumstance exists, you should consider all the evidence on this matter, as you recall it.

(JA 220) (emphasis added).

The members convicted Appellee of the offense of indecent conduct as charged. (JA 088.)

The Lawrence Issue on Appeal

On appeal, Appellee alleged, *inter alia*, that his conduct—which he continued to describe only as "masturbation"—was constitutionally protected under Lawrence v. Texas. (JA 002.) AFCCA, which set aside Appellee's conviction because he did not have fair notice his conduct was prohibited, did not initially reach the Lawrence issue or legal and factual sufficiency. (Id.)

This Court reversed and remanded with the following mandate:

> The case is returned to the Judge Advocate General of the Air Force for remand to the United States Air Force Court of Criminal Appeals with instructions to: (1) determine whether Appellee had a constitutionally protected liberty interest under Lawrence v. Texas, 539 U.S. 558 (2003), **to privately engage in sexual activity with a childlike sex doll;** and (2) address any other issues previously raised by

> Appellee before the United States Air Force Court of Criminal Appeals that were mooted by the lower court's prior decision to overturn the conviction.

(JA 018) (emphasis added).

On remand, Appellee did not file a new brief at AFCCA addressing how the childlike characteristics of the sex doll affected the Lawrence analysis. Appellee only filed a reply brief in response to the Government's new brief. (*See* JA 022.) AFCCA denied the Government's request for oral argument on the Lawrence issue. (JA 019.) AFCCA concluded that Appellee's conduct—which it described as "masturbation, in solitude, in secret, and in a private living place"—fell within the Lawrence liberty interest. (JA 034.) Then, applying Marcum, the AFCCA found that Appellee's conviction was factually insufficient. (JA 038-042.) AFCCA later denied the Government's motions for reconsideration and for the court to examine the childlike sex doll which had been admitted at trial as Prosecution Exhibit 2. (JA 084-85.)

SUMMARY OF THE ARGUMENT

On remand, action by the Courts of Criminal Appeal (CCAs) must conform to the "limitations and conditions prescribed" by this Court's mandate. United States v. Riley, 55 M.J. 185, 188 (C.A.A.F. 2001). Here, AFCCA failed to adhere to this Court's mandate when it broadly concluded Appellee had a liberty interest in "masturbation in private and in solitude," instead of answering the *specific*

question posed by this Court: "[W]hether Appellee had a constitutionally protected liberty interest under Lawrence v. Texas, 539 U.S. 558 (2003), to privately engage in sexual activity with a childlike sex doll." (JA 018.)

In Lawrence, the Supreme Court recognized a liberty interest relating to private consensual homosexual conduct. 539 U.S. at 567, 578. The Lawrence zone of liberty is a narrow one, entry to which requires a "careful description of the asserted fundamental liberty interest." Washington v. Glucksberg, 521 U.S. 702, 721 (1997). AFCCA erred by extending that zone to Appellee's sexual activity with a childlike sex doll—which it imprecisely characterized as "masturbation"—without explaining how Appellee's interest in this behavior overcomes the government's legitimate interest in prohibiting such conduct to safeguard children and prevent pedophilia. New York v. Ferber, 458 U.S. 747, 757 (1982).

Even if Lawrence protects sexual activity with a childlike sex doll, AFCCA erred by failing to recognize that under Marcum, this protection should not extend to the commission of such activity in a military dorm room, given that its service-discrediting nature would impact the government's substantial interest in raising and supporting the armed forces. 60 M.J. at 206. AFCCA's failure to follow this Court's remand and misapplication of Lawrence and Marcum tainted its factual sufficiency review. This Court should reverse and remand for a new factual sufficiency review using correct legal principles.

ARGUMENT

I.

AFFCA FAILED TO FOLLOW THIS COURT'S REMAND INSTRUCTION BY ANALYZING THE PURPORTED LAWRENCE LIBERTY INTEREST AS "MASTURBATION IN SOLITUDE, IN SECRET, AND IN PRIVATE," INSTEAD OF "PRIVATELY ENGAG[ING] IN SEXUAL ACTIVITY WITH A CHILDLIKE SEX DOLL."

Standard of Review

A lower court's interpretation of—and adherence to—an appellate court's remand mandate is reviewed de novo. *See, e.g.*, United States v. Johnson, 11 F.4th 529, 531 (6th Cir. 2021); United States v. McMurrin, 72 M.J. 697 (N-M Ct. Crim. App. 2013). "Only the court issuing the order can *Ultimately* decide if its order has been complied with." United States v. Hawkins, 11 M.J. 4, 6 (C.M.A. 1981).

Law & Analysis

A superior court's remand mandate is "controlling as to matters within its compass." Sprague v. Ticonic Nat'l Bank, 307 U.S. 161, 168 (1939). Thus, "an inferior court has no power or authority to deviate from the mandate issued by an appellate court," Briggs v. Pa. R. Co., 334 U.S. 304, 306 (1948), and "cannot vary it or examine it for any other purpose than execution." Ex parte Union S.B. Co., 178 U.S. 317, 319 (1900). Otherwise, "anarchy [would] prevail within the federal judicial system." Hutto v. Davis, 454 U.S. 370, 375 (1982); United States v.

Montesinos, 28 M.J. 38, 44 (C.M.A. 1989) ("A court that had no control over inferior tribunals or authorities would really not be a court.").

Thus, "[o]n a remand from this Court, a Court of Criminal Appeals 'can only take action that conforms to the limitations and conditions prescribed by the remand.'" Riley, 55 M.J. at 188 (quoting Montesinos, 28 M.J. at 44). Consequently, when this Court remanded this case with specific instructions for AFCCA to determine "whether [Appellee] had a constitutionally protected liberty interest under Lawrence v. Texas, 539 U.S. 558 (2003), to privately engage in sexual activity *with a childlike sex doll*," AFCCA should have framed its answer in those terms. By concluding that "masturbation, in solitude, in secret, in a private living space"—a much broader category of behavior than what was specified by this Court—was constitutionally protected, AFCCA failed to adhere to this Court's mandate. Considering this error, this Court should answer the Lawrence question itself and then remand for a new factual sufficiency review.

A. AFCCA erred by analyzing the Lawrence liberty interest on broader terms than those specifically articulated by this Court's mandate.

The scope of a superior court's remand—which may be either general or limited—binds the lower court. United States v. Richardson, 948 F.3d 733, 738 (6th Cir. 2020); United States v. Campbell, 168 F.3d 263, 265 (6th Cir. 1999). General remands "give [lower] courts authority to address all matters as long as remaining consistent with the remand," whereas limited remands "explicitly

outline the issues to be addressed by the [lower] court and create a narrow framework within which the [lower] court must operate." United States v. O'Dell, 320 F.3d 674, 680 (6th Cir. 2003).

When a remand contains "specific instructions," the lower court "must confine its review to the limitations established by the…remand order." United States v. Loredo-Torres, 164 F. App'x 523, 524 (5th Cir. 2006); United States v. Kennedy, 682 F.3d 244, 253 (3d Cir. 2012) ("By qualifying our mandate with the term 'only,' we forewarned the District Court to be especially careful not to consider issues extraneous to resentencing."). Thus, when a superior court's mandate directs the lower court to "decide certain questions, generally the [lower] court must … decide those questions.'" Callahan v. Cty. of Suffolk, 96 F.4th 362, 367 (2d Cir. 2024) (citation omitted). This case is no exception.

Here, because this Court directed AFCCA to answer a certain question—whether Appellee had a liberty interest in "sexual activity with a childlike sex doll"—AFCCA had to limit itself to answering the question *as framed* by this Court. By specifying the conduct to be analyzed under Lawrence, this Court was ensuring "a careful description of the asserted fundamental liberty interest," Glucksberg, 521 U.S. at 721, and warning AFCCA to focus on a narrower category of conduct than what Appellee described in his briefs as "masturbation." *See* Kennedy, 682 F.3d at 253. Had this Court intended for AFCCA to address

whether Lawrence applied to masturbation broadly, it could have remanded this case with general instructions to consider the unresolved assignments of error. *See, e.g.*, United States v. Leslie, 13 M.J. 170, 173 (C.M.A. 1982) (remanding with directions to "take appropriate action, consistent with this opinion, as to any other assignment of error.").

Against this backdrop, AFCCA's error becomes clear. A mandate to determine whether Appellee had a liberty interest in sexual activity with a childlike sex doll "does not encompass" a determination that solitary masturbation—a much broader and less concerning category of behavior—is constitutionally protected. *See* Riley, 55 M.J. at 189. By ignoring "limiting language" that directed AFCCA to decide a specific question and analyzing the Lawrence interest on its own terms, O'Dell, 320 F.3d at 680, AFCCA failed to operate within the "narrow framework" established by the mandate. Campbell, 168 F.3d at 265. Although AFCCA claimed that "[t]he ostensibly childlike appearance of the doll also does not dissuade us" (JA 034), it neglected to explain why Lawrence protects sexual activity with a childlike sex doll or why the government had no legitimate interest in proscribing such behavior.

Indeed, AFCCA's error appears to be based, in part, on its belief that this Court could not characterize the doll as "childlike." (JA 028-030.) But as discussed below, this inattention to how a higher court's mandate works is error.

B. By disregarding this Court's description of the doll as "childlike," AFCCA ignored factual circumstances embraced by the mandate.

A lower court "cannot disregard a specific mandate on remand because it disagrees with it or thinks it insufficiently explained." United States v. Dutch, 978 F.3d 1341, 1346 (10th Cir. 2020). Instead, it must "consider carefully both the letter and the spirit of the mandate taking into account the appellate court's opinion and the circumstances it embraces." United States v. Dávila-Félix, 763 F.3d 105, 109 (1st Cir. 2014) (quotation marks omitted). Here, in neglecting to analyze the Lawrence interest as defined by this Court, AFCCA disregarded this Court's characterization of the doll as "childlike," because (1) "the CAAF may not determine questions of fact," and (2) in its first opinion, "[AFCCA] did not find the doll was a lifelike sex doll with the physical characteristics of a prepubescent child." (JA 029.) This was error, for this Court's use of the word "childlike" required no factfinding—it was merely a one-word summary of the charge and evidence, and was consistent with a factual finding by the trial judge that the doll "had the appearance of a child." (JA 279.)

To start, this Court was never bound by any factual determinations by AFCCA about "Adele," given that AFCCA made "*no finding* concerning whether the doll was a representation of a child." (JA 029); *see* United States v. Wille, 26 C.M.R. 403, 407 (C.M.A. 1958) (conclusion that is not a finding of fact is "not binding"). Thus, in describing the doll as "childlike," this Court was not

"overturn[ing] a finding of fact" made by AFCCA. United States v. Sell, 11 C.M.R. 202, 208 (C.M.A. 1953). Nor was this Court making its own finding of fact. It was entitled to rely on the military judge's finding of fact in his ruling on the Lawrence motion that the doll "had the appearance of a child." (JA 279.) AFCCA never opined that this finding of fact was clearly erroneous or unsupported by the record, nor could it have, given Appellee's own admissions that the doll looked like a child.

To characterize the doll as "childlike" this Court did not have to weigh evidence, Sell, 11 C.M.R. at 208, or re-assess the credibility of witnesses. United States v. Taylor, 19 C.M.R. 71, 75 (C.M.A. 1955). Rather, this Court's use of "childlike" simply reflects the "circumstances it embrace[d]," Dávila-Félix, 763 F.3d at 109, namely, (a) the conduct as charged on the charge sheet, which described a doll "with the physical characteristics of a female child"; (b) witness testimony describing the doll's size and resemblance to a "child" or "toddler"; (c) a finding of fact by the military judge that the doll was approximately 35 inches long and "had the appearance of a child"; (d) Appellee's own description of "Adele" as a "child sex doll"; and (e) the lack of evidence describing the doll as adult-like or adult-sized. Put differently, this Court's use of "childlike"[2]—defined as

[2] *Childlike*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/childlike (last visited Feb.11, 2025).

"*resembling*, suggesting, or appropriate to a child"—reflects that the doll's relative size and appearance were undisputed.[3] And where there is no factual dispute, no factfinding is required. *See* United States v. Tippit, 65 M.J. 69, 76 (C.A.A.F. 2007).

Because this Court's characterization of the doll as "childlike" neither ran afoul of its authority nor encroached into that of the lower court, AFCCA should have analyzed the purported liberty interest in those terms. Its failure to do so was error. This Court could remand the case to AFCCA with firmer instructions to consider the Lawrence issue and conduct a new factual sufficiency review. Or this Court could simply answer itself the legal question of whether private sexual acts with a childlike sex doll are protected by Lawrence. For the reasons discussed in the next certified issue, this Court should conclude that Appellee's conduct was unprotected by Lawrence and remand the case to AFCCA for a new factual sufficiency review considering that determination.

[3] The physical doll was entered into evidence without objection and provided to the factfinder for examination during deliberations. (JA 077-078.) The United States moved AFCCA to examine the doll for itself, which AFCCA denied. (JA 077-078, 084.)

II.

AFCCA ERRED IN ITS APPLICATION OF LAWRENCE V. TEXAS, 539 U.S. 558 (2003) AND UNITED STATES V. MARCUM, 60 M.J. 198 (C.A.A.F. 2004) TO FIND APPELLEE'S CONVICTION FACTUALLY INSUFFICIENT.

Standard of Review

This Court reviews a CCA's factual sufficiency determination for "the application of correct legal principles." United States v. Thompson, 83 M.J. 1, 4 (C.A.A.F. 2022) (quotation marks omitted). A CCA's interpretation of the law is reviewed de novo. United States v. Harvey, 85 M.J. 127, 129 (C.A.A.F. 2024).

Law & Analysis

In Lawrence v. Texas, the Supreme Court held that the Fourteenth Amendment's Due Process Clause prohibited Texas from criminalizing private and consensual homosexual intimacy because the statute at issue "[sought] to control a personal relationship that … is within the liberty of persons to choose without being punished as criminals" while "further[ing] no legitimate state interest which can justify its intrusion into the personal and private life of the individual." 539 U.S. at 567, 578. In so holding, the Court reasoned that "[w]hen sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring," and that "adults may

choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons." Id. at 567.

The Lawrence liberty interest extends to military servicemembers, to whom "[c]onstitutional rights identified by the Supreme Court generally apply … unless by text or scope they are plainly inapplicable." Marcum, 60 M.J. at 206. But the application of Lawrence to military members "must be addressed in context," because "an understanding of military culture and mission cautions against sweeping constitutional pronouncements that may not account for the nuance of military life." Id. This Court articulated a three-step test for determining whether a servicemember's conduct is protected under Lawrence: (1) whether the conduct was of a nature to bring it within the liberty interest identified by the Supreme Court; (2) whether the conduct encompassed any behavior or factors identified by the Supreme Court as outside the analysis in Lawrence; and (3) whether there are additional factors relevant solely in the military environment that affect the nature and reach of the Lawrence liberty interest. Id. at 206-07.

Here, in finding Appellee's conviction for indecent conduct—that is, "engaging in sexual acts with a sex doll with the physical characteristics of a female child"—factually insufficient, AFCCA concluded that (1) Appellee had a Lawrence liberty interest in his conduct, which AFCCA described as "masturbating in private and in solitude," and (2) under Marcum, neither the

"nature of the object with which [Appellee] masturbated" nor anything about the military environment justified "remov[ing] a constitutionally protected liberty interest in solitary, secret masturbation in one's private space." (JA 039-041.)

As discussed below, AFCCA's application of Lawrence and Marcum was reversible error because: (1) Lawrence's narrow liberty interest cannot reasonably be interpreted as extending to private sexual acts with a childlike sex doll; (2) given that Lawrence is inapplicable, AFCCA should not have applied Marcum; and (3) in any event, AFCCA erred in applying Marcum because it employed circular reasoning to conclude that the potentially service discrediting nature of Appellee's conduct did not constitute a Marcum exception to Lawrence because the court had already recognized a liberty interest under Lawrence. Given that AFCCA "misunderstood the law," this Court should remand for a new factual sufficiency review "under correct legal principles." Thompson, 83 M.J. at 4.

A. Appellee's conduct is unprotected by Lawrence.

The Due Process Clause prohibits the government from infringing on *fundamental* rights and liberties which are "objectively, deeply rooted in this Nation's history and tradition," unless the infringement is narrowly tailored to serve a compelling state interest. Glucksberg, 521 U.S. at 721 (internal citations omitted). If an asserted right is not fundamental, however, courts apply "rational basis" review: the government's action is presumptively lawful, and the court

rejects a due process claim if that action is "rationally related to legitimate government interests." Henry v. Sheriff of Tuscaloosa Cty., 135 F.4th 1271 (11th Cir. 2025) (citing Glucksberg, 521 U.S. at 728). "Rational basis review is much like a sieve because most government action passes through it unscathed." Id. Courts sustain government action if "there is any reasonably conceivable state of facts that could provide a rational basis for it." Id. (citing FCC v. Beach Commc'ns, Inc. 508 U.S. 307, 313 (1993).

In Lawrence, the Supreme Court recognized that individuals had a liberty right in engaging in private, mutually consensual homosexual conduct without government interference. 539 U.S. at 578. And a Texas statute criminalizing homosexual conduct "further[ed] no legitimate state interest which [could] justify its intrusion into the personal and private life of the individual." Id. But as this Court recognized in Marcum, the Supreme Court did not "expressly identify the liberty interest [from Lawrence] as a fundamental right."[4] 60 M.J. at 205; *see* Ondo v. City of Cleveland, 795 F.3d 597, 608 (6th Cir. 2015) (observing that in

[4] Based on Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022), it seems unlikely that the current Supreme Court would find that committing sexual acts with a childlike sex doll qualifies as a fundamental right. The Supreme Court reiterated that it "has long been reluctant to recognize rights that are not mentioned in the Constitution," and that "[a] fundamental right must be objectively, deeply rooted in this Nation's history and tradition." Id. at 239. Neither Appellee nor AFCCA has argued or explained how the right to engage in sexual acts with a childlike sex doll is objectively, deeply rooted in this Nation's history and tradition.

Lawrence, the Supreme Court invalidated the Texas sodomy law "using the language of rational-basis review, rather than any form of heightened scrutiny"). Marcum further noted that "the door is held open for lower courts to address the scope and nature of the right identified in Lawrence, as well as its limitations, based on contexts and factors the Supreme Court may not have anticipated or chose not to address in Lawrence." 60 M.J. at 205.

One context that the Supreme Court "may not have anticipated" in Lawrence was whether individuals have a liberty interest in private sexual conduct with a childlike sex doll. As discussed below, the Lawrence liberty interest cannot be interpreted as extending to such conduct.

1. In treating the liberty interest at issue as merely private masturbation, neither Appellee nor AFCCA "carefully defined" the liberty interest, as required by Supreme Court precedent.

A substantive due process analysis requires "a careful description of the asserted fundamental liberty interest." Dept of State v. Munoz, 602 U.S. 899, 910 (2024) (citing Glucksberg, 521 U.S. at. 721). This is because "[i]dentifying unenumerated rights carries a serious risk of judicial overreach, so this Court exercises the utmost care whenever we are asked to break new ground in this field." Id. (internal quotations omitted). The Supreme Court has rejected a proposed formulation of a right when "it was not an accurate depiction of the true

issue in the case." Raich v. Gonzales, 500 F.3d 850, 863 (9th Cir. 2007) (citing Reno v. Flores, 507 U.S. 292, 302 (1993)).

Here, Appellee never "carefully" described his asserted liberty interest as required by Glucksberg. His motion to dismiss for failure to state an offense focused on his rights to private acts with a "sex doll" without mentioning the doll's childlike characteristics. (JA 263-65.) Appellee even inaccurately described the charge against him as "engaging in sexual acts with a sex doll," omitting the crucial language "with the characteristics of a female child." (Id.) On appeal, Appellee continued to describe his liberty interest as being in masturbation, and did not file another initial brief on remand explaining why Lawrence protected private sexual acts with a *childlike* sex doll.

In Raich, the Ninth Circuit rejected the appellant's broad characterization of her asserted right as the right to make medical decisions to preserve bodily integrity, avoid pain, and preserve her life, when the actual issue was the appellant's "right to use *marijuana* to preserve bodily integrity, avoid pain, and preserve her life." 500 F.3d at 864. In this case, Appellee's asserted liberty interest in using a "sex doll" was not an "accurate depiction of the true issue in this case" and should have also been rejected. *See* Raich, 500 F.3d at 863.

Further compounding the problem is AFCCA's own failure to "carefully" describe" the liberty interest at issue. It was inappropriate for AFCCA to follow

Appellee's self-interested lead and analyze the Lawrence question in terms of whether "masturbation, in solitude, in secret, and in private living quarters" was the protected liberty interest in question. Appellee was not convicted of masturbating in private. He was specifically charged with, and convicted of, "engaging in sexual acts with a sex doll with the physical characteristic of a female child." AFCCA never stated, in either of its opinions, that it found that the doll did not have the physical characteristics of a female child. If AFCCA had indeed found that the Government failed to prove beyond a reasonable doubt that the doll had the "physical characteristics of a female child," then it could have overturned Appellee's conviction on that basis in either of its opinions. But absent a finding that the doll did not have the physical characteristics of a female child, AFCCA needed to analyze Appellee's purported liberty interest in the context of the conduct charged.

2. This Court and other federal and state courts have narrowly defined the liberty interest in Lawrence, none of which support extending the protections of Lawrence to sexual activity with a childlike sex doll.

AFCCA should have paused before extending Lawrence's holding to Appellee's sexual conduct with a child sex doll. The Supreme Court "has often admonished that general language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then

considering." Turkiye Halk Bankasi A.S. v. United States, 598 U.S. 264, 278 (2023) (internal citations and quotations omitted). This Court and other state and federal courts have all heeded the Supreme Court's admonition, and unlike AFCCA, have narrowly construed the Lawrence liberty interest as a result.

For example, this Court has explained that the Lawrence liberty interest is "about the right to form meaningful, personal bonds that find expression in sexual intimacy." United States v. Meakin, 78 M.J. 396, 403 (C.A.A.F. 2019) (citing Seegmiller v. LaVerkin City, 528 F.3d 762, 771 (10th Cir. 2008)). The Lawrence decision "did not purport to include any and all behavior touching on sex within its purview," nor did it "conclude that an even more general right to engage in private sexual conduct would be a fundamental right." Id. And Lawrence "did not establish a presumptive constitutional protection for all offenses arising in the context of sexual activity." United States v. Goings, 72 M.J. 202, 206 (C.A.A.F. 2013). Rather, "[w]hat is evident from the Supreme Court's decision is its intent to prevent the state from burdening certain intimate, consensual relationships by criminalizing the private sexual acts that are instrumental to those relationships." Meakin, 78 M.J. at 403 (quoting United States v. Stagliano, 693 F. Supp. 2d 25, 38 (D.D.C. 2010)).

Similarly, federal circuit courts across the United States have interpreted Lawrence as recognizing a narrow individual liberty interest in private sexual

relations between consenting adults, which must sometimes give way to legitimate governmental interests. *See, e.g.*, Cook v. Gates, 528 F.3d 42, 56 (1st Cir. 2008) (Lawrence does not protect public or coerced homosexual acts by servicemembers given "exceedingly weighty" government interest in military effectiveness); United States v. Coil, 442 F.3d 912, 917 (5th Cir. 2006) (Lawrence does not protect transportation of obscene materials for sale or distribution); Lowe v. Swanson, 663 F.3d 258, 264 (6th Cir. 2011) (Lawrence does not protect incest between adult family members, given the "important state interest" in "protecting the family from the destructive influence of intra-family, extra-marital sexual contact"); Muth v. Frank, 412 F.3d 808, 818 (7th Cir. 2005) (opining that Lawrence "did not announce a fundamental right of adults to engage in all forms of private consensual sexual conduct"); United States v. Rouse, 936 F.3d 849, 852 (8th Cir. 2019) (Lawrence "does not extend so far" as to protect sex with minors even if they are of consenting age, or the production of video recordings of persons engaged in sexually explicit conduct); Seegmiller v. Laverkin City, 528 F.3d 762, 771 (10th Cir. 2008) (Lawrence "counsels against finding a broad-based fundamental right to engage in private sexual conduct"); Lofton v. Sec'y of the Dep't of Children & Family Servs., 358 F.3d 804, 815-16 (11th Cir. 2004) ("[I]t is a strained and ultimately incorrect reading of Lawrence to interpret it to announce a new fundamental right").

Even where the private conduct at issue involves consenting adults, Lawrence may not apply. For example, two federal circuits have declined to extend Lawrence's protections to state incest statutes. In Muth, the Seventh Circuit noted "the specific focus in Lawrence on homosexual sodomy" and that the Supreme Court "viewed its decision as a reconsideration of . . . another case involving homosexual sodomy." 412 F.3d at 817. This limited focus and the Supreme Court's failure to use its traditional Glucksberg test for determining fundamental rights led the Seventh Circuit to conclude that Lawrence did not announce a broad fundamental right "for adults to engage in all forms of private consensual sexual conduct" that would encompass incest laws. 412 F.3d at 817. In Lowe, the Sixth Circuit similarly reasoned that the Lawrence opinion "did not address or clearly establish federal law" regarding state incest statutes. 663 F.3d at 264.

State courts are similarly discerning in their application of Lawrence. For example, the Court of Appeals of Virginia found Lawrence inapplicable to bestiality because the "conduct at issue" involved something other than "only consenting adults—it involved sexual activity with a dog." Warren v. Commonwealth, 69 Va. App. 659, 672, 822 S.E.2d 395, 401 (2019). The court observed that the "addition of the dog fundamentally alters the equation, and thus, the claimed right is broader than the right of consenting adults to engage in

noncommercial sex acts in private; it necessarily includes the claim of a right to engage in sexual acts with animals." Id.

The shared approach of these courts in cabining Lawrence to its facts tracks this Court's opinion in Goings, which narrowly described the "focal point" of Lawrence as "sexual conduct between two individuals in a wholly private setting that was criminal for no other reason that the act of the sexual conduct itself." 72 M.J at 207. The same considerations apply here. To start, Appellee's conduct does not fall within the "focal point of Lawrence" as defined by Goings. Just as Lawrence does not apply to incest and bestiality, neither does it apply to private sexual acts with a child sex doll. The addition of a childlike sex doll "fundamentally alters the equation," Warren, 69 Va. App. at 672, and means that Appellee is asserting a right—the right to engage in private sexual activity with a sex doll with anatomically correct orifices that was made to resemble a child—that is broader than the one protected in Lawrence. In short, Lawrence "is not implicated in the present case." Lowe, 663 F.3d at 263-64.

AFCCA cited no binding or persuasive authority to support extending Lawrence to cover engaging in private sexual conduct with a childlike sex doll. Such an extension would be improper, since Lawrence was not examining the "quite different circumstances" presented by Appellee's case. *See* Turkiye Halk Bankasi A.S, 598 U.S. at 278. Although AFCCA quoted this Court's statement in

Goings that "[n]o one disagrees that wholly private and consensual sexual activity, without more, falls within Lawrence" (JA 032), it provided no reason why the involvement of a child sex doll did not constitute the "more" that took Appellee's conduct outside the realm of Lawrence.[5] AFCCA erred by not exploring this crucial difference. This Court should hold that Lawrence does not extend to private sexual activity with a childlike sex doll.

3. AFCCA disregarded the legitimate government interest in prohibiting private sexual acts with childlike sex dolls.

In striking down Texas' anti-sodomy statute, the Lawrence court relied, in part, on the fact that the statute furthered "no legitimate state interest which could justify its intrusion into the personal and private life of the individual." 539 U.S. at 578. This rational basis analysis should have guided AFCCA's approach, but in finding that Lawrence extended to Appellee's conduct, AFCCA neglected it completely. In effect, AFCCA assumed that because the state had no legitimate interest in criminalizing private, consensual homosexual conduct, the government similarly has no legitimate interest in criminalizing private sexual acts with child sex dolls. AFCCA was mistaken—the government has a substantial interest in such prohibitions.

[5] In finding that Lawrence protected Appellee's conduct, AFCCA merely said that "[t]he ostensibly childlike appearance of doll [] does not dissuade us," with no further elaboration. (JA 034.)

Other courts have addressed "legitimate state interest" in determining Lawrence's reach. In concluding that Lawrence did not invalidate a state law against incest, the Sixth Circuit concluded that "the interest in criminalizing incest" was "far greater" than the interest "in prosecuting homosexual sodomy." Lowe, 663 F.3d at 624. The court reasoned that "protecting the family from the destructive influence of intra-family, extra-marital sexual contact" was "an important state interest that the Lawrence Court did not invalidate." Id. *See also* Warren, 69 Va. App. At 673-74 (rejecting Lawrence's applicability to a bestiality law, in part, because of the legitimate state interests in public health and preventing cruelty to animals). The same proves true here. Nothing about Lawrence invalidates the government's "compelling interest in protecting the physical and psychological well-being of minors," Sable Commc'ns of Cal. v. FCC, 492 U.S. 115, 126 (1989), which, as explained below, is served by prohibiting behavior such as Appellee's.

The Supreme Court has sustained legislation aimed at protecting children "even when the laws have operated in the sensitive area of constitutionally protected rights," because preventing the abuse of children "constitutes a government objective of surpassing importance." Ferber, 458 U.S. at 757. Child sex dolls threaten this legitimate governmental objective in more ways than one. The use of such dolls "normalize[s] the thoughts and behaviors towards children

considered by society to be undesirable and dangerous, including that children are objects to be used for sexual gratification." Marie-Helen Maras & Lauren R. Shapiro, *Child Sex Dolls and Robots: More Than Just an Uncanny Valley*, JOURNAL OF INTERNET LAW, Dec. 2017, at 17. It also "desensitize[s] the user" to pedophilic behavior. Congressional Record Vol. 164, No. 98, June 13, 2018, pgs H5119-H51. These concerns inform Congress's continued efforts to pass legislation prohibiting importation or transportation of child sex dolls:

- "The dolls . . . not only lead to rape, but they make rape easier by teaching the rapist about how to overcome resistance and subdue the victim."
- "For users . . . the dolls . . . normalize submissiveness and normalize sex between adults and minors."
- "The dolls . . . are intrinsically related to abuse of minors, they cause the exploitation, objectification, abuse, and rape of minors."

CREEPER Act 2.0, H.R. 1186, 119th Cong. (2025).

Combined, the above gives rise to a very real concern—like that associated with those who consume child pornography—that those who use childlike sex dolls may progress to actual abuse of a child. *See* United States v. Colbert, 605 F.3d 573, 578 (8th Cir. 2010). As with the consumption of child pornography, sexual acts with an anatomically correct child sex doll may be the "logical precursor to physical interaction with a child," and "a simpler and less detectable way of satisfying pedophilic desires." Id. The Supreme Court has maintained that

the government "need not wait until behavioral experts or educators can provide empirical data before enacting controls of commerce in obscene materials unprotected . . . by a constitutional right to privacy." Kaplan v. California, 413 U.S. 115, 120 (1973). In fact, "a legislative body" may "enact such regulatory laws on the basis of unprovable assumptions." Id. The same logic from Kaplan applies to prohibiting obscene conduct. The government's legitimate interest in the prevention of pedophilic behavior means that sexual acts with a childlike sex doll—a narrow category of sexual activity—can be prohibited. *See* Ferber, 458 U.S. at 757.

Ten states have now acted on this interest and, since the dates of Appellee's conduct, have passed laws prohibiting the possession of childlike sex dolls. (*See* Appendix.) The states' rationales for introducing and passing such legislation reflect widespread concern that childlike sex dolls—which are becoming increasingly prevalent—may "promote sexual urges among pedophiles"[6]; allow them to "practice victimizing children"[7]; and serve as a "gateway to real assaults

[6] Ryan Nicol, Governor Signs Bill Outlawing Child-Like Sex Dolls, Florida Politics (May 23, 2019), https://floridapolitics.com/archives/297216-governor-signs-bill-sex-dolls/.

[7] Courtney King, *Kentucky State Rep Files Bill to Make Child Sex Dolls Illegal*, FOX 19 (Jan. 9, 2024), https://www.fox19.com/2024/01/10/kentucky-state-rep-files-bill-make-child-sex-dolls-illegal/.

that can devastate children and families."[8] In the words of one Arizona law enforcement official: "This sex doll is not an end result. This is not in place of. This is a stepping stone. Research shows that people who are willing to abuse children, this is one thing that they are going to use to get to that end result."[9]

This proliferation of state prohibitions on childlike sex dolls is proof of the legitimacy of the government's interest in protecting children. Whereas Texas' anti-sodomy statute found little moral reinforcement in other parts of the law because of the decline of such laws generally, Lawrence, 539 U.S. at 570, the opposite is true here. As evidenced by the state enactments in recent years, anti-child sex doll laws are on the rise. (*See* Appendix.) Put differently, the legitimate government interest in prohibiting these dolls—and sexual conduct with them—to prevent pedophilic behavior and protect children grows by the day.

This governmental interest passes muster even if, as some federal circuits believe, a higher standard than rational basis review applies to Lawrence inquiries. *See* Cook, 528 F.3d at 56 (Lawrence "applies a standard of review that lies between

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[8] Todd Richmond, *Wisconsin Republicans Join Push to Outlaw Child Sex Dolls*, ASSOCIATED PRESS (May 22, 2023), https://apnews.com/article/child-sex-dolls-outlaw-wisconsin-bill-dd70c02189f491b1526d628d6c9db968.

[9] Kevin Reagan, *Hobbs Signs Bill Outlawing 'Child Sex Dolls' in Arizona*, 12 NEWS (May 19, 2023) https://www.12news.com/article/news/local/arizona/hobbs-signs-bill-outlawing-child-sex-dolls-arizona/75-1fdf76e6-0008-409c-adc5-f77eefeadbb0.

strict scrutiny and rational basis"). Compared to the "exceedingly weighty" government interest in curbing pedophilic tendencies, the "degree of intrusion into [Appellee's] private sexual life" is slight. Cook, 528 F.3d at 56. Unlike the anti-sodomy statute in Lawrence, a prohibition on sexual acts with a childlike sex doll does not "seek to control a personal relationship" between free persons. 539 U.S. at 567. Nor does it unduly burden an individual's ability to engage in private masturbation or use other sex toys—just as the consumption of child pornography may be criminalized while the consumption of non-obscene adult pornography is not, the use of a childlike sex doll may also be criminalized while the use of non-childlike sex toys is not. Like the state's interest in protecting the family unit from the "destructive influence" of incest, the government's interest in protecting children "is far greater and much different" from the religious beliefs and "respect for the traditional family" that informed Texas' interest in prosecuting homosexual sodomy. Lowe, 663 F.3d at 264; Lawrence, 539 U.S. at 571. AFCCA erred by failing to recognize this legitimate government interest. Since the government has a legitimate interest in prohibiting Appellee's conduct, this Court should conclude that it was unprotected by Lawrence.

B. AFCCA committed reversible error during its factual sufficiency review by incorrectly applying Lawrence and Marcum.

AFCCA's erroneous characterization of Appellee's conduct and erroneous conclusion that Appellee's conduct was protected by Lawrence tainted its entire

factual sufficiency review. First, AFCCA should not have even applied the Marcum factors since it should not have recognized a Lawrence liberty interest in private sexual acts with childlike sex doll.

But apart from that and most glaringly, AFCCA engaged in circular reasoning to find Appellee's conviction factually insufficient. AFCCA acknowledged that under Marcum, conduct covered by Lawrence can still be prosecuted in the military if additional factors relevant to the military environment cabin the nature and reach of Lawrence. (JA XX, XX). AFCCA next properly recognized that "a determination that conduct was of a nature to bring discredit upon the armed services could satisfy the Marcum factors." (JA 040) (citing Goings, 72 M.J. at 207). But then AFCCA found that "even considering potential discredit to the service, we have found that Appellant's conduct . . .should warrant the Lawrence liberty protection." (JA 040.) In other words, AFCCA found that the Marcum exceptions to the Lawrence protection did not apply, because the conduct was protected by Lawrence. This circular analysis is neither logically nor legally supportable and establishes that AFCCA applied incorrect legal principles during its factual sufficiency analysis.

1. ***Appellee's convicted conduct meets the third Marcum factor because it was service discrediting.***

Although the parties at trial and the military judge equated the "aggravating circumstances" requirement for indecent conduct with Marcum (JA 210), that

requirement is much older. As far back as 1952, this Court asserted that "Congress has not intended by Article 134 and its statutory predecessors to regulate the wholly private moral conducts of an individual." United States v. Snyder, 5 C.M.R. 15, 19 (1952). As a result, "fornication, in the absence of aggravating circumstances" was not recognized as an offense under military law. Id. Although the military judge here chose to instruct the members on only one "aggravating factor"—that Appellee engaged in the sexual acts "to simulate sexual acts with a minor"—appellate courts are not so limited in deciding whether the charged conduct meets the third Marcum factor.

Apart from the "aggravating circumstances" requirement under Article 134, indecent conduct, this Court has made clear that the service discrediting nature of conduct alone can satisfy the third Marcum factor. Marcum itself involved a charge of sodomy under Article 125, UCMJ, not an Article 134, UCMJ offense. 60 M.J. at 199. But later in Goings, this Court acknowledged that "wholly private and consensual sexual activity" might not be "categorically protected" under Lawrence where the conduct was "service discrediting." 72 M.J. at 206. *See also* United States v. Brisbane*,* 63 M.J. 106, 116 (C.A.A.F. 2006) (even if conduct, such as possession of virtual child pornography, might be protected in the civilian context, military courts look to whether that conduct is service discrediting and/or prejudicial to good order and discipline). Where charged conduct "does not

directly fall within the focal point of Lawrence" and is criminal because it is service discrediting, a servicemember claiming his conduct is constitutionally protected "must develop facts at trial that show why his interest should overcome the determination of Congress and the President that the conduct be proscribed." Goings, 72 at 207. Thus, when analyzing whether Lawrence-protected conduct is prosecutable in the military, AFCCA should have fully evaluated the service discrediting nature of the conduct.

Here, even if Appellee's conduct were protected under Lawrence, the Government presented ample evidence that the conduct was service discrediting. The Government did not merely prove that Appellee engaged "in sexual acts with a sex doll with the physical characteristics of a female child." It offered many other surrounding circumstances to showing that "under the circumstances, the conduct of the accused was of a nature to bring discredit upon the armed forces." MCM, para. 104.b.(3) (2019 ed.)

Appellee sought out a sex doll online expressly for the purpose of having sex with it.[10] The doll was obviously a child, by Appellee's own admission, and was

[10] Considering Appellee admitted that he sought out and purchased a sex doll for sexual gratification, AFCCA's suggestion that Appellee "possessed her mostly for his emotional support, not for sexual gratification" does not accurately reflect the evidence. If Appellee had wanted a childlike doll merely for emotional support, then he did not need to buy a doll with vaginal, anal, and oral orifices designed for penetration.

anatomically correct, in that it had vaginal, anal, and oral cavities to be used for penetration. And adding to its lewd nature, it had a function to make moaning noises. Appellee knew he was getting a child doll when he ordered it and meant for the doll to be like a "Lolli" – an anime character depicting an underage girl with a very petite body type.

Appellee caused the child sex doll to enter foreign commerce by having it shipped from China to the United States. Essentially, Appellee's proclivities helped create and perpetuate a market for child sex dolls.[11] Appellee shipped the doll to an unknowing friend's off-base residence because Appellee knew it would not be "good to have something like that on a military base." Appellee was very excited upon receiving the doll and had sex with it the same day. Appellee had vaginal and anal sex with the doll three times in his dorm room before it was confiscated. Each time he admitted to having thoughts of "Adele" being a real child. Although he claimed to stop upon having such thoughts, that did not deter

[11] In explaining why it chose to criminalize the possession of child obscenity in 18 U.S.C. 1466A(b), Congress stated that the prohibition was "premised on the government's substantial and legitimate interest in preventing obscenity from entering the stream of commerce" . . . "and on the reasonable assumption" that someone's possession of the obscenity is "fairly dispositive" that he "caused, induced, or effected, the interstate transmission or commerce of the obscene materials (e.g., by ordering or requesting their transmission)." 107 H. Rpt. 526. Likewise here, Appellee's possession and use of the doll reflected that he had caused a child sex doll to enter the stream of commerce by ordering from China, having it shipped to United States, and bringing it onto a military base.

him from having sex with the doll again later when he "was thinking about Lollies and demon Lollies." (JA 201.) Appellee also brought the doll into his shared dormitory shower, where he admitted it could have been discovered by his roommate. (JA 179.)

The childlike sex doll was so lifelike that the dorm inspectors who found it were shocked and scared. A member of the public knowing all these circumstances would likewise be disturbed that an airman perpetuated the international market for lewd child sex dolls by knowingly and purposely importing one from China onto a United States military installation and then having anal and vaginal sex with it in the dorms while thinking of underage anime characters and ultimately real children. Considering the well-established impropriety of adults having sex with minors, Appellee's sexual acts with a lewd childlike sex doll that mimicked such conduct would tend to make the public think less of the military and hold it in lower regard, making the conduct "service discrediting."

By finding Appellee guilty, the members necessarily found that "under the circumstances, the conduct of [Appellee] was of a nature to bring discredit upon the armed forces." So to the extent that service discrediting conduct can satisfy the third Marcum factor, the members found that element beyond a reasonable doubt. *C.f.* United States v. Castellano, 72 M.J. 217, 221 (C.A.A.F. 2013).

Since Appellee's conduct did not fall within the focal point of Lawrence and was service discrediting, he had the burden "to develop facts at trial that show why his interest should overcome the determination of Congress and the President that the conduct be proscribed." Goings, 72 M.J. at 207. Appellee failed to meet this burden, especially considering that he framed his interest as being in "masturbation" rather than in engaging in sex acts with a doll with the characteristics of a female child. Appellee has not shown why any court should recognize his interest in engaging in sexual acts with a childlike sex doll – much less in his military dorm room, with a child sex doll that he imported to the United States from China, shipped to an unknowing friend's house, and then brought onto a military installation.

In the end, AFCCA erred by failing to hold Appellee to the burden articulated in Goings to establish that his service discrediting conduct was constitutionally protected. The court's backward reasoning that the service discrediting nature of the conduct did not matter because the conduct was protected by Lawrence was a misapplication of the law. That alone warrants reversal and remand for a new factual sufficiency review.

2. The military's mission and legitimate interest in maintaining its reputation warrant applying Marcum and holding that Lawrence does not protect sex acts with a childlike sex doll.

AFCCA erred by not fully evaluating the service discrediting nature of Appellee's conduct because it claimed Appellee had a liberty interest under Lawrence. But in its analysis of the third Marcum factor, AFCCA also failed to appreciate how the fact that Appellee's misconduct occurred in a military dorm room subject to inspection could adversely affect the military's reputation, such that prohibiting Appellee's conduct would be justified.

"[T]he military is, by necessity, a specialized society separate from civilian society," Parker v. Levy, 417 U.S. 733, 743 (1974), and "must insist upon a respect for duty and a discipline without counterpart in civilian life." Schlesinger v. Councilman, 420 U.S. 738, 757 (1975). "[D]ue to concern for military mission accomplishment," military members enjoy less autonomy than their civilian counterparts. United States v. Stirewalt, 60 M.J. 297, 304 (C.A.A.F. 2004) (quoting Marcum, 60 M.J. at 206). Thus, "[w]hile servicemembers clearly retain a liberty interest to engage in certain intimate sexual conduct, 'this right must be tempered in a military setting based on the mission of the military[.]'" Marcum, 60 M.J. at 208 (quoting United States v. Brown, 45 M.J. 389, 397 (C.A.A.F. 1996)). As a result, "reasonable expectations of privacy within the military society

will differ from those in the civilian society," United States v. Middleton, 10 M.J. 123, 127 (C.M.A. 1981), especially when living on a military installation.

i. Even if Lawrence protects sexual acts with a childlike sex doll, that protection should not apply in a military dormitory with a diminished expectation of privacy where discovery by others is more likely.

"[T]he threshold of a barracks/dormitory room does not provide the same sanctuary as the threshold of a private home." United States v. McCarthy, 38 M.J. 398, 403 (C.M.A. 1993); United States v. Bowersox, 72 M.J. 71, 76 (C.A.A.F. 2013) ("[A] soldier has less of an expectation of privacy in his shared barracks room than a civilian does in his home."). Military members living in the dorms know that they are "subject to inspection to a degree not contemplated in private homes." Id. And any expectation of privacy that military members might have in their dorm rooms evaporates during inspections: "[D]uring a legitimate health and welfare inspection, the area of the inspection becomes '*public*' as to the commander, for no privacy from the commander may be expected within the range of the inspection." Middleton, 10 M.J. at 129 (emphasis added). Appellee's dorm room was no exception.

That Appellee's misconduct did not occur during an inspection, while his dorm room took on a "public" character, is immaterial—what matters is that his room was never "wholly private." Middleton, 10 M.J. at 129; Goings, 72 M.J. at 207. That the child sex doll was discovered during a routine readiness inspection

by military command representatives underscores this diminished privacy and highlights the "divergent nature" of a private home and a military dorm room. Bowersox, 72 M.J. at 76. Inspections exist for exactly the purpose served here—"to determine and ensure the security, military fitness, or good order and discipline of the unit" by ensuring servicemembers are not engaging in criminal behavior in the dorms. Mil. R. Evid. 313(b). Appellee did not enjoy a level of privacy in his military dorm room that would allow him to perpetrate his indecent conduct without being discovered. Indeed, Appellee recognized this himself. He told OSI investigators that he did not know why he thought he could keep the doll in his dorm, because it was "something that raises suspicion of course." (JA 199.) He also acknowledged that his roommate might discover the doll in the shower with him. (JA 179.)

This limited expectation of privacy in military dorm rooms also undercuts any suggestion that Appellee's conduct might somehow be collaterally protected under Stanley v. Georgia, 394 U.S. 557, 565 (1969) as private possession and use of obscene material. *See* Rocha, 84 M.J. at 358-59 (Johnson, J., dissenting). In Stanley, the Supreme Court held that states could not make mere private possession of obscene material a crime, opining that "a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch." 394 U.S. at 565. But as the Court has since emphasized,

"Stanley depended, not on any First Amendment right to purchase or possess obscene materials, but on the right to *privacy in the home*." United States v. 12 200-Ft. Reels of Super 8mm Film, 413 U.S. 123, 126 (1973) (emphasis added). Moreover, "[t]his constitutional right protected in Stanley does not automatically apply to servicemembers," since conduct could still bring discredit upon the military. United States v. Byunggu Kim, 83 M.J. 235, 239 (C.A.A.F. 2023). Such is the case "[i]n the barracks, [where] the impact that one servicemember can have on other persons living or working there demands that a commander have authority to regulate behavior in ways not ordinarily acceptable in the civilian sphere." McCarthy, 38 M.J. at 403. In a military dorm room that does not enjoy the same wholesale privacy as a civilian residence, it is fair to say the application of Stanley is especially limited—if it even applies at all.

Whatever limited application Stanley might have to possession of *adult* obscenity in a military dorm should not be extended to a "life like" *child* sex doll that "shocked," "stunned," and "scared" the command representatives and military law enforcement who discovered it. After all, the Supreme Court itself has cautioned that "Stanley should not be read too broadly." Osborne v. Ohio, 495 U.S. 103, 108 (1990). Besides being "focus[ed] only on the possession of obscene materials in the privacy of one's home," United States v. Whorley, 550 F.3d 326, 332 (4th Cir. 2008), the holding in Stanley is limited to obscene material involving

adults. In Osborne, the Supreme Court declined to apply Stanley's protections to child exploitation material. 495 U.S. at 109; *see also* United States v. Williams, 553 U.S. 285, 288 (2008) ("[W]e have held that the government may criminalize the possession of child pornography, even though it may not criminalize the mere possession of obscene material involving adults."). In so doing, the Court acknowledged that the government has a compelling interest in "destroy[ing] a market for the exploitative use of children." Osborne, 495 U.S. at 109; *see* United States v. Vincent, 167 F.3d 428, 431 (8th Cir. 1999) ("The Constitution offers less protection when sexually explicit material depicts minors rather than adults.")

This Court should thus be unpersuaded by any suggestion that Stanley would protect Appellee's crime. Here, Stanley is inapplicable because (a) this case involves sexual conduct *with*—rather than mere possession of—obscene material, and (b) the obscene material was not a run-of-the-mill sex toy that mimicked a particular organ or function, but "a doll of a child" which the members found beyond a reasonable doubt was used to simulate sexual intercourse with a minor. This is *not* "private, legal masturbation" or in-home possession of adult obscenity that would be protected under either Lawrence or Stanley.

Any argument that Appellee's obscene conduct is protected by Stanley is also diminished by the existence under federal law of 18 U.S.C.§1466A(b)(1). That statute prohibits the knowing possession of an obscene visual depiction,

including a sculpture, of a minor engaged in a lascivious exhibition of the anus, genitals or public area, where certain circumstances are met. 18 U.S.C. §1466A(f)(2). Those circumstances include where the visual depiction has been transported in interstate or foreign commerce. 18 U.S.C.§1466A(d)(4). When passing the legislation, Congress endorsed the Department of Justice's view that, even though the statute criminalized possession of obscenity, it did not abridge Stanley. H.R. Rep. No. 107-526, at 24 (2002). As Congress explained, the "possession prohibition in Section 1466A(b) would not be premised . . . on the desirability of controlling a person's private thoughts," but on "the government's substantial and legitimate interest in preventing obscenity from entering the stream of commerce in the first instance." Id. at 25. Congress reasoned that someone's possession of such obscene materials "is fairly dispositive proof" that the person "caused, induced, or effected" the materials to enter the stream of commerce "e.g., by ordering or requesting their transmission." Id. And, as the Supreme Court has acknowledged, Stanley does not create a right to receive, transport, or distribute obscene material. United States v. Orito, 413 U.S. 139, 141 (1973). Several courts have found that Stanley does not apply to *possession* of obscene depictions of minors, including anime, that have previously traveled in interstate commerce. United States v. Mees, 2009 U.S. Dist. LEXIS 48801, at *11-13 (E.D. Mo. June 10, 2009); United States v. Handley, 564 F.Supp.2d 996 1001 (S.D. Iowa 2008);

United States v. Taylor, 2016 CCA LEXIS 108, at *17 (A.F. Ct. Crim. App. Feb. 25, 2016).

Arguably, Appellee's possession of the child sex doll could fall under the prohibitions of 18 U.S.C. §1466A(b)(1). The anatomically correct "Adele," with vaginal and anal orifices, was analogous to a sculpture of a minor lasciviously exhibiting her genitals and anus. And Appellee's online purchase caused the doll to enter the stream of foreign commerce from China to the United States. If Appellee's possession of the obscene child sex doll was not constitutionally protected under Stanley, then it defies logic that his indecent conduct with the same obscene doll would be—especially considering that Stanley itself addresses only possession of obscenity, not underlying sexual conduct involving that obscenity. In sum, Stanley is limited to the possession of adult obscenity in one's home and offers no protection to Appellee.

ii. *The military's reputation would suffer if conduct like Appellee's cannot be prohibited in the military context under Marcum, which would impact the government's substantial interest in raising and supporting the armed forces.*

The "nuance of military life" further demands that sexual acts with a childlike sex doll be forbidden in a military dorm room, and more importantly, the armed forces writ large. Marcum, 60 M.J. at 206.

The armed forces have a "constitutional responsibility" to "defend the primary society," United States v. Hessler, 7 M.J. 9, 10 (C.M.A. 1979), including

"children[,] the most vulnerable members of our society." United States v. Lutes, 72 M.J. 530, 532 (A.F. Ct. Crim. App. 2013). This responsibility informs the military's custom of protecting children from harm, *see* United States v. Vaughan, 58 M.J. 29, 32 (C.A.A.F. 2003), and explains why other servicemembers were so repulsed upon discovering Appellee's doll. Given the reaction to the mere presence of the doll, most reasonable people would be horrified if they witnessed or heard about Appellee committing sexual acts on the doll. Considering this, it would be nonsensical to make a military dorm a sanctuary for behavior which simulates and normalizes the sexual exploitation of society's "most vulnerable" demographic, Hessler, 7 M.J. at 10, especially given "the importance of maintaining the good name of the military establishment." United States v. Lockwood, 15 M.J. 1, 9 (C.M.A. 1983).

As courts have repeatedly recognized, the military has a "legitimate interest in protecting its reputation with the civilian community," United States v. Padgett, 48 M.J. 273, 278 (C.A.A.F. 1998), so as to "maintain[] the public's confidence in the integrity of the armed forces," Leary v. Dalton, 58 F.3d 748, 754 (1st Cir. 1995), and "secure more effective support for the institution." United States ex rel. Okerlund v. Laird, 473 F.2d 1286, 1290 (7th Cir. 1973). The armed forces' relationship with the American citizenry is especially important today because our nation's military is composed of volunteers recruited from civilian life:

> For a nation which now relies on an All-Volunteer Force obtained by recruitment and which needs to retain in uniform "career soldiers" skilled in the technology of modern warfare, maintaining the "reputation" and "morale" of the Armed Services is essential.

Lockwood, 15 M.J. at 10 (capitalization in original).

Put differently, the military's reputation matters because "[i]mproved public relations could result in greater likelihood of voluntary participation" in the armed forces. United States ex rel. Okerlund, 473 F.2d at 1290. Given that "our nation's very preservation hinges on…preparation for war," Thomasson v. Perry, 80 F.3d 915, 925 (4th Cir. 1996), the military's ability to recruit and retain is part-and-parcel of national security. *See* Harris v. Hahn, 827 F.3d 359, 368 (5th Cir. 2016) ("Texas can promote national security by encouraging enlistment."). Indeed, the Supreme Court has acknowledged as much: "Military recruiting promotes the substantial Government interest in raising and supporting the Armed Forces." Rumsfeld v. Forum for Acad. & Institutional Rights, Inc., 547 U.S. 47, 67 (2006).

Since the military's reputation directly influences its ability to recruit new servicemembers—a mission performed in service of a constitutional mandate—AFCCA erred by dismissing "potential discredit to the service" in concluding that even if Lawrence covered Appellee's conduct, the Marcum exceptions did not apply. Were the public to learn that servicemembers enjoyed "constitutional protection" in "sexual acts with childlike sex dolls" in military quarters maintained

by taxpayer dollars, the military's reputation and standing would be in jeopardy. By extension, so too would the military's capability to attract talented individuals for service in the armed forces. Other Americans might be dissuaded from military service if they believed their future military roommate might be having sex with an anatomically correct child sex doll in the adjoining dormitory suite and then bringing that doll into their shared dormitory shower.

Considering this, the military's legitimate interest in maintaining the public's trust to ensure adequate manning in the armed forces constitutes a Marcum factor that is "relevant solely in the military environment" and cuts against extending the Lawrence interest to cover Appellee's indecent conduct. 60 M.J. at 207. The mere fact that Appellee's misconduct occurred "in solitude, in secret, and in private" does not make it worthy of protection, because like other crimes appealing to the prurient interest, the secrecy does not make his behavior less criminal. *See* United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019) (noting that child pornography offenses are committed in private). Just as the viewing and possession of child pornography in private is criminal and service-discrediting, regardless of whether others are contemporaneously aware that it is happening, so too is the performance of sexual acts on a childlike sex doll.

The military, "which holds its society to stricter accountability," Parker, 417 U.S. at 765 (Blackmun, J., with whom Burger, C.J., joined, concurring), protects its

reputation by prosecuting such conduct. As this Court recognized, "when it enacted the general article, Congress intend to proscribe conduct which directly and adversely affected the good name of the service." United States v. Sanchez, 29 C.M.R. 32, 33-34 (C.M.A. 1960). Appellee's indecent conduct—committing sexual acts on a childlike sex doll—is precisely the type of conduct the military must be able to criminalize and punish to protect "the good name of the military establishment." Lockwood, 15 M.J. at 9.

In sum, Appellee's sexual conduct with a childlike sex doll occurred in a military dorm room on a military base, was service discrediting, and was the type of conduct that, if tolerated, might deter other Americans from wanting to serve. These "additional factors relevant solely in the military" were more than sufficient to constitute exceptions to any purported liberty interest under Lawrence. Yet AFCCA employed circular reasoning to conclude that such factors did not matter because the court had already determined that Appellee's conduct "should warrant the Lawrence liberty protection." (JA 034.)

Not only did AFCCA err by improperly analyzing the third Marcum factor, but it also failed to follow Supreme Court precedent by imprecisely describing Appellee's liberty interest as being in private masturbation, rather than in private sexual acts with a childlike sex doll. By incorrectly identifying the liberty interest at issue, AFCCA wrongly concluded that Lawrence protected Appellee's conduct.

Given these missteps in understanding and applying both Lawrence and Marcum, AFCCA did not conduct its factual sufficiency review using correct legal principles. At the very least, there is "an open question" about whether the court's factual sufficiency review reflected a correct view of the law. Thompson, 83 M.J. at 4-5. In such cases, this Court has found remand for a new factual sufficiency review to be appropriate. Id. Such is the case here.

CONCLUSION

For these reasons, the United States requests that this Honorable Court find that AFCCA erred both in failing to follow this Court's instructions on remand and in its application of Lawrence and Marcum during its factual sufficiency review. This Court should hold that Appellee's conduct was not protected by Lawrence, vacate AFCCA's decision, and remand the case for a new factual sufficiency review.

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I certify that a copy of the foregoing was transmitted by electronic means to the Court and the Air Force Appellate Defense Division on 11 June 2025.

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This brief complies with the type-volume limitation of Rule 24(b) because:

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This brief complies with the typeface and type style requirements of Rule 37.

/s/ Kate E. Lee, Maj, USAF

Attorney for the United States (Appellant)

Dated: 11 June 2025

APPENDIX

State Statutes on Child Sex Dolls

STATE STATUTE	TEXT OF STATUTE
ARIZ. REV. STAT. § 13-1429 (LexisNexis 2023)	**A.** A person commits possessing a child sex doll by intentionally or knowingly possessing a child sex doll. **B.** A person commits trafficking a child sex doll by knowingly manufacturing, distributing, selling, transferring, offering to sell, advertising, providing, shipping, delivering for shipment, offering to deliver for shipment or possessing with the intent to manufacture, distribute, sell, ship or transfer a child sex doll. **C.** A person commits importing a child sex doll by knowingly transporting a child sex doll into this state by any means with the intent to distribute, sell or transfer the child sex doll. **D.** In a prosecution for a violation of subsection B of this section, unless satisfactorily explained, the possession of two or more child sex dolls may give rise to an inference that a person intends to commit trafficking a child sex doll. **E.** This section does not apply to a common carrier transporting a container with a child sex doll if the common carrier does not have knowledge of the container's contents. **F.** On or before December 31, 2024 and each year thereafter, the administrative office of the courts shall submit a report to the President of the senate, the speaker of the house of representatives, the minority leader in the senate and the minority leader in the house of representatives that lists, by county, the total number of persons who have been convicted of a violation of this section. **G.** A violation of this section is a class 4 felony. **H.** For the purposes of this section, "child sex doll" means an anatomically correct doll, mannequin or robot that both: **1.** Has the features of or features that resemble those of an infant or a child who is under twelve years of age. **2.** Is intended to be used for sexual stimulation or gratification.
FLA. STAT. § 847.011(5) (2022)	**(a)** **1.** A person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or

	transmute; or advertise in any manner an obscene, child-like sex doll. **2.** **a.** Except as provided in sub-subparagraph b., a person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. **b.** A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. **(b)** **1.** Except as provided in subparagraph 2., a person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. **2.** A person who is convicted of violating this paragraph a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. **(c)** **1.** A law enforcement officer may arrest without a warrant any person who he or she has probable cause to believe has violated paragraph (b). **2.** Upon proper affidavits being made, a search warrant may be issued to further investigate a violation of paragraph (b), including to search a private dwelling.
HAW. REV. STAT. § 712-1216.5 (2021)	**(1)** A person commits the offense of importation, sale, or possession of a childlike sex doll if the person intentionally, knowingly, or recklessly: **(a)** Imports or causes to be imported into the State one or more childlike sex dolls; **(b)** Sells, offers to sell, distributes, or otherwise provides to another person one or more childlike sex dolls; or **(c)** Possesses one or more childlike sex dolls. **(2)** The importation, sale, or possession of one childlike sex doll is a misdemeanor.

	(3) The importation, sale, or possession of two to five childlike sex dolls is a class C felony. **(4)** The importation, sale, or possession of more than five childlike sex dolls is a class B felony. **(5)** For purposes of this section, "childlike sex doll" means a doll, mannequin, or robot that is intended for sexual stimulation, gratification, or perversion and that has the features of, or features that resemble those of, a person below the age of puberty.
KY. REV. STAT. ANN. § 531.365 (LexisNexis 2024)	**(1)** A person is guilty of possession of a child sex doll when he or she knowingly possesses a child sex doll. **(2)** Possession of a child sex doll is a Class D felony.
LA. REV. STAT. ANN. § 14:81.6 (LexisNexis 2024)	**A.** **(1)** A person commits the crime of possessing a child sex doll by intentionally or knowingly possessing a child sex doll. **(2)** A person commits the crime of trafficking a child sex doll by knowingly manufacturing, distributing, selling, transferring, offering to sell, advertising, providing, shipping, delivering for shipment, offering to deliver for shipment, or possessing with the intent to manufacture, distribute, sell, ship, or transfer a child sex doll. **(3)** A person commits the crime of importing a child sex doll by knowingly transporting or causing to be transported a child sex doll into this state by any means with the intent to distribute, sell, or transfer the child sex doll to another, whether or not the person has taken actual possession of the child sex doll. **B.** For purposes of this Section, "child sex doll" means an anatomically correct doll, mannequin, or robot that both: **(1)** Has the features of or features that resemble those of an infant or a child under eighteen years of age. **(2)** Is intended to be used for sexual stimulation or gratification. **C.** In a prosecution for a violation of Paragraph (A)(2) of this Section, the possession of two or more child sex dolls creates a rebuttable presumption that a person intends to commit trafficking of a child sex doll.

	D. This Section shall not apply to a common carrier transporting a container with a child sex doll if the common carrier does not have actual knowledge of the container's contents. **E.** **(1)** Whoever violates the provisions of Paragraph (A)(1) of this Section upon conviction shall be imprisoned at hard labor for not more than one year, fined not more than five thousand dollars, or both. **(2)** Whoever violates the provisions of Paragraph (A)(2) of this Section upon conviction shall be imprisoned at hard labor for not less than six months nor more than one year, fined not more than ten thousand dollars, or both. **(3)** Whoever violates the provisions of Paragraph (A)(3) of this Section upon conviction shall be imprisoned at hard labor for not less than one year nor more than two years, fined not more than twenty thousand dollars, or both. **F.** No later than December 31, 2024, and no later than the thirty-first of December of each year thereafter, the court of conviction shall report each conviction pursuant to this Section to the judicial administrator's office of the Louisiana Supreme Court, which shall no later than January 31, 2025, and no later than the thirty-first of January of each year thereafter, submit a report to the governor, the president of the Senate, and the speaker of the House of Representatives that lists, by parish, the total number of persons who have been convicted of a violation of this Section in the preceding year.
N.C. GEN. STAT. § 14-190.17A (2024)	(**a) Offense. —** A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses a child sex doll or material that contains a visual representation of a minor engaging in sexual activity or that has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual activity. **(b) Inference. —** In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor. **(c) Mistake of Age. —** Mistake of age is not a defense to a prosecution under this section. **(d) Punishment and Sentencing. —** Violation of this section is a Class H felony.

S.D. CODIFIED LAWS § 22-24A-3.1 (2021)	**Child-like sex doll — Purchase or possession.** It is a Class 1 misdemeanor for any person to knowingly purchase or possess a child-like sex doll. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 6 felony.
TENN. CODE ANN. § 39-17-910 (2019)	**(a)** It is an offense for a person to knowingly possess a child-like sex doll. **(b)** It is an offense for a person to knowingly sell or distribute a child-like sex doll. **(c)** It is an offense for a person to knowingly transport a child-like sex doll into this state or within this state with the intent to sell or distribute the child-like sex doll. **(d)** As used in this section, "child-like sex doll" means an obscene anatomically correct doll, mannequin, or robot that is intended for sexual stimulation or gratification and that has the features of, or has features that resemble those of, a minor. **(e)** A violation of subsection (a) is a Class A misdemeanor. **(f)** A violation of subsection (b) or (c) is a Class E felony, and in addition, notwithstanding § 40-35-111, a violator shall be fined an amount not less than ten thousand dollars ($10,000) nor more than fifty thousand dollars ($50,000). Any fine must be paid to the clerk of the court imposing the sentence, who shall transfer it to the state treasurer, who shall credit the fine to the general fund. All fines so credited to the general fund pursuant to this subsection (f) are subject to appropriation by the general assembly for the exclusive purposes of funding child advocacy centers, court-appointed special advocates, and sexual assault centers.
UTAH CODE ANN. § 76-10-1236 (LexisNexis 2023)	**(1)** As used in this section, "child sex doll" means: **(a)** an anatomically correct doll, mannequin, or robot, with the features of, or with features that resemble those of, a minor; and **(b)** is intended for use in sexual acts. **(2)** An actor commits the offense of possession of a child sex doll if the actor knowingly or intentionally possesses a child sex doll.

	(3) A violation of Subsection (2) is a class A misdemeanor, with a mandatory fine of not less than $2,500.
WIS. STAT. § 944.19 (2023)	**(1)** In this section, "child sex doll" means an anatomically correct doll, mannequin, or robot, with features that are intended to resemble a minor that is intended for use in sex acts, for sexual gratification, or for the purpose of manipulating children into participating in sex acts, instructing children how to participate in sexual acts, or normalizing sexual behavior with children. **(2)** **(a)** No person may intentionally possess a child sex doll. A person who violates this paragraph is guilty of the following: **1.** For a first offense involving fewer than 3 child sex dolls, a Class I felony. **2.** For a 2nd offense or for an offense involving at least 3 child sex dolls, a Class H felony. **3.** For a 3rd or subsequent offense, a Class G felony. **4.** For a first offense involving a child sex doll that is intended to resemble a specific minor, a Class E felony. **5.** For a 2nd or subsequent offense involving a child sex doll that is intended to resemble a specific minor, a Class D felony. **(b)** No person may intentionally sell, transfer possession of, advertise, display, or provide premises for the use of, or offer to sell, transfer possession of, advertise, display, or provide premises for the use of, a child sex doll. A person who violates this paragraph is guilty of the following: **1.** For a first offense, a Class I felony. **2.** For a 2nd offense, a Class H felony. **3.** For a 3rd or subsequent offense, a Class G felony. **(c)** No person may intentionally sell, transfer possession of, advertise, or display, or offer to sell, transfer possession of, advertise, or display, instructions on how to create a child sex doll or materials intended to create a child sex doll. A person who violates this paragraph is guilty of the following: **1.** For a first offense, a Class F felony. **2.** For a 2nd or subsequent offense, a Class E felony.

	(d) No person may intentionally manufacture a child sex doll. A person who violates this paragraph is guilty of the following: **1.** For a first offense, a Class F felony. **2.** For a 2nd or subsequent offense, a Class E felony. **3.** For a first offense involving a child sex doll that is intended to resemble a specific minor, a Class E felony. **4.** For a 2nd or subsequent offense involving a child sex doll that is intended to resemble a specific minor, a Class D felony. **(3)** A person who commits a violation under sub. (2) is guilty of a felony that is one classification higher than the penalty provided under sub. (2) if the person has one or more prior convictions for a violation under s. 948.02 (1), 948.025 (1) (a) to (d), 948.03 (2), 948.05, 948.075, or 948.12. **(4)** **(a)** Subsection (2) does not apply to a law enforcement officer, physician, psychologist, attorney, officer of the court, or other person involved in law enforcement or child therapy in the lawful performance of his or her duty. **(b)** Subsection (2) (b) and (d) do not apply to a manufacturer or distributor who is providing or manufacturing a child sex doll for a use described in par. (a).