

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORY L. BAST,

Defendant-Appellant.

UNPUBLISHED

August 24, 2001

No. 222906

Montcalm Circuit Court

LC No. 99-000058-FH

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for child sexually abusive activity, MCL 750.145c(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction is based on a series of letters he wrote from prison to a fourteen-year-old girl, requesting that she send him nude photographs of herself in suggestive positions. Defendant asserts that the statute is unconstitutionally vague and overbroad, and violates his First Amendment rights.

MCL 750.145c(2) provides:

A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child, or that person has not taken reasonable precautions to determine the age of the child.

The terms used are further defined in the statute:

‘Child sexually abusive material’ means a developed or undeveloped photograph, film, slide, electronic visual image, computer diskette, or sound recording of a child engaging in a listed sexual act, [MCL 750.145c(1)(i)].

‘Listed sexual act’ means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity. [MCL 750.145c(1)(e)].

‘Erotic nudity’ means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, ‘lascivious’ means wanton, lewd, and lustful, and tending to produce voluptuous or lewd emotions. [MCL 750.145c(1)(d)].

While ordinary nudity may be protected by the First Amendment, child pornography is not. *People v Riggs*, 237 Mich App 584, 593-594; 604 NW2d 68 (1999). If a statute’s definition of child sexually abusive material is narrowly drawn so that protected forms of free speech are not punished, the statute passes constitutional muster. *Id.*

Riggs construed the current statutory definition of erotic nudity, and found that it does not violate the First Amendment. The definition is narrowly drawn so that there is no infringement upon protected forms of free speech. *Id.*, 595. Defendant has failed to show that the statute infringed on his First Amendment rights.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin