

Order

Michigan Supreme Court
Lansing, Michigan

October 27, 2006

130546

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

BRIAN LEE HILL,
Defendant-Appellant.

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 130546
COA: 264361
Muskegon CC: 04-051083-FH

On order of the Court, the application for leave to appeal the January 24, 2006 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CAVANAGH and KELLY, JJ., would grant leave to appeal.

MARKMAN, J., dissents and states as follows:

Defendant was charged with multiple counts involving child sexually abusive material; only one of these is at issue in this case. The Court of Appeals determined that under MCL 750.145c(2) a person "arranges for, produces, makes, or finances" child sexually abusive material when he downloads such material from the Internet and "burns" it onto a CD. I would grant leave to appeal to determine (a) whether the more reasonable meaning of this language is to sanction persons who *originate* such material; (b) whether the Court of Appeals interpretation would essentially render nugatory the prohibition in MCL 750.145c(4) on the "possession" of child sexually abusive materials because it would impose the same penalty on a person who downloads such material as the person who actually entices the child to pose for the material; and (c) whether the Court of Appeals interpretation of "makes" has legal consequences in other digital contexts. For example, does a person who downloads a pirated movie "make" such a movie and would the person be subject to the same penalty as the person who originally pirated the movie? Does a person who downloads a pirated song "make" such a song and would the person be subject to the same penalty as the person who originally made available the song? Does a person who downloads a defamatory article from the Internet "make" such an

article and would the person be subject to the same penalty as the original publisher of the defamation?



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 27, 2006

Corbin R. Davis

Clerk