

Teen's Graphic Sexting Violates Child Pornography Laws: Just because it's you, doesn't make it legal

By Trish Weaver

Maryland's intermediate appellate court recently found that teens that circulate sexually explicit images of themselves are violating Maryland's criminal laws. More specifically, the Maryland Court of Special Appeals determined that a 16 year old who texted a sexually explicit video file of herself to two friends was guilty of violating the Maryland statute that prohibits the distribution of child pornography. The Court made clear that the fact that the teen engaged in the sexual behavior and its recording consensually and then voluntarily circulated it herself, did not matter.

The Maryland appellate court reviewed a case where 16 year old S.K. sent a text message to two friends, both also minors, containing a digital video of herself performing fellatio on a male partner. There was no evidence that S.K.'s male partner was a minor, so the case turned on whether S.K.'s distribution of herself engaging in sexual conduct violated the law. S.K. argued that, since she was over the age of 16 and therefore was capable of legal consent in Maryland, her legal consent to the being the subject of the video took it outside of child pornography laws. S.K. also argued that the child pornography laws were intended to criminalize the actions of those who prey on a child and not the child depicted. The Court rejected these arguments based on the language of the statute, as well as the state's broad interest in protecting minors from any kind of child pornography. The Court cited authorities expressing concern about "self-produced child pornography" given that it is permanently memorialized, beyond the control of the child depicted once shared, and may lead to depression, low self-esteem, and other harmful effects given that the images could be circulating forever.

The Court also rejected S.K.'s argument that, even if her conduct violated the child pornography statute, she had a First Amendment right to express herself as she chooses. After reviewing several U.S. Supreme Court cases addressing obscenity, child pornography and the First Amendment, the Maryland court conclude that such law did not afford any constitutional protection to pornography involving real (as opposed to computer-generated) minors. Based on the court's finding that the child pornography statute was violated, S.K. was found to a delinquent and placed on probation with several conditions, including that she undergo psychiatric evaluation.