

SUPREME COURT OF ILLINOIS

People v. McKown

2022 IL 127683 (Ill. 2022) · No. 127683 · Decided November 28, 2022

SUMMARY

The Illinois Supreme Court held that handmade images created by modifying photographs of identifiable children to depict sexual conduct constitute child pornography under section 11-20.1 of the Illinois Criminal Code. The court rejected the defendant's First Amendment and overbreadth challenges, distinguishing morphed images involving real children from virtual child pornography. The court also addressed the corpus delicti rule and the need for independent corroborating evidence of criminal conduct when a defendant's statements are used as proof.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Chief Justice Theis; Justice Anne M. Burke; Justice Neville; Justice Michael J. Burke; Justice Overstreet; Justice Carter
JURISDICTION	Illinois
DECIDED	November 28, 2022
DOCKET	127683
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed convictions following a bench trial. The Illinois Supreme Court allowed defendant's petition for leave to appeal from the appellate court's judgment affirming some convictions, reversing the conviction on count IV under the corpus delicti rule, and upholding the child-pornography conviction.
STANDARD OF REVIEW	Statutory interpretation and constitutional challenges are reviewed de novo. The sufficiency of the evidence is reviewed under whether any rational factfinder could have found the defendant guilty beyond a reasonable doubt, with deference to the trier of fact's credibility determinations.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential
PARTIES	John T. McKown v. The People of the State of Illinois

TOPICS

statutory interpretation

first amendment

overbreadth doctrine

criminal procedure

evidence

PRACTICE AREAS

criminal law

constitutional law

evidence

statutory interpretation

QUESTIONS PRESENTED

1. Whether images of real children that were altered by inserting images of penises into their mouths constituted child pornography under section 11-20.1 of the Illinois Criminal Code.
2. Whether applying section 11-20.1 to handmade morphed images of real children violated the First Amendment.
3. Whether independent evidence sufficiently corroborated McKown's admissions to satisfy the corpus delicti rule for the convictions affirmed on counts I and V.

HOLDINGS

1. Images of real children altered to depict the children engaging in sexual conduct constituted a visual reproduction of a child who was by simulation engaged in sexual conduct within the meaning of section 11-20.1.
2. Morphed child pornography involving identifiable real children is not protected by the First Amendment, and section 11-20.1 is constitutional as applied to McKown's materials.
3. McKown failed to establish that section 11-20.1 prohibits a substantial amount of protected speech in relation to its plainly legitimate sweep; the statute was not unconstitutionally overbroad.
4. The corpus delicti rule was satisfied because J.M.'s testimony and related evidence independently tended to show that the charged sexual offenses occurred and corroborated McKown's admissions.

KEY QUOTATIONS

“Defendant’s “collages” fall into the category of morphed child pornography, which includes materials that are “created by altering a real child’s image to make it appear that the child is engaged in some type of sexual activity.”” (¶ 35)

“That said, the independent corroborating evidence need only tend to show the commission of a crime.” (¶ 46)

“For these reasons, we hold that defendant’s materials are morphed child pornography and are not protected by the first amendment.” (¶ 51)

FACTUAL BACKGROUND

McKown was charged with sexually abusing his grandson, J.M., and possessing child-pornography materials. Police found cutout images of young girls' faces with slits cut into the mouths and images of male penises inserted into those slits in McKown's basement. McKown made statements to police describing sexual contact with J.M., and J.M. testified that McKown had anally penetrated him and left a sticky substance on his buttocks.

The circuit court convicted McKown of predatory criminal sexual assault, two counts of aggravated criminal sexual abuse, and unlawful possession of child pornography.

PROCEDURAL HISTORY

The Macon County circuit court convicted McKown of predatory criminal sexual assault of a child, two counts of aggravated criminal sexual abuse, and unlawful possession of child pornography, while acquitting him of the other charged offenses. The appellate court reversed the count IV conviction for lack of corpus delicti corroboration, affirmed the convictions on counts I and V, and rejected the constitutional challenge to the child-pornography statute. The Illinois Supreme Court affirmed the appellate court's judgment and affirmed the circuit court judgment in part and reversed it in part.

DISPOSITION

affirmed

CASES CITED

- In re Julie M., 2021 IL 125768, ¶ 27
- People v. Grant, 2022 IL 126824, ¶ 24
- People v. Minnis, 2016 IL 119563, ¶¶ 21, 44
- People v. Relerford, 2017 IL 121094, ¶ 30
- New York v. Ferber, 458 U.S. 747, 756-59, 762, 771, 773-74 (1982)
- Osborne v. Ohio, 495 U.S. 103, 111-12 (1990)
- Ashcroft v. Free Speech Coalition, 535 U.S. 234, 239-42, 250, 255, 258 (2002)
- State v. Tooley, 114 Ohio St. 3d 366, 2007-Ohio-3698, 872 N.E.2d 894, ¶¶ 18, 24
- United States v. Mecham, 950 F.3d 257, 260, 265 (5th Cir. 2020)
- Doe v. Boland, 698 F.3d 877, 881, 883 (6th Cir. 2012)
- United States v. Hotaling, 634 F.3d 725, 730 (2d Cir. 2011)
- McFadden v. State, 67 So. 3d 169, 184 (Ala. Crim. App. 2010)
- United States v. Williams, 553 U.S. 285, 290, 297 (2008)
- Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973)
- People v. Alexander, 204 Ill. 2d 472, 481-83, 486 (2003)
- People v. Lara, 2012 IL 112370, ¶¶ 17-18, 42, 46
- People v. King, 2020 IL 123926, ¶ 53
- People v. Sargent, 239 Ill. 2d 166, 183 (2010)
- People v. Furby, 138 Ill. 2d 434, 451-52 (1990)