

Police Prosecutor Update

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On October 2, 2017, the Indiana Supreme Court issued its decision in State v. Thakar, ___ N.E.3d ___ (Ind. 2017), reversing the Court of Appeals decision in State v. Thakar, 71 N.E.3d 27, (Ind. Ct. App. 2017) and overruling Salter v. State, 906 N.E.2d 212 (Ind. Ct. App. 2009).

Thakar was chatting on-line with a 16-year-old Oregon girl, and after learning her age, he sent her a photograph of his erect penis. When police went to Thakar's home, he cooperated and identified the photographs he had sent the girl. Thakar was charged under I.C. 35-49-3-3(a)(1) with dissemination of matter harmful to minors. Thakar moved to dismiss the charge because the statute defining the crime was void for vagueness. He relied on Salter v. State, which found that I.C. 35-49-3-3(a)(1) was void for vagueness as applied to a 16-year-old because the age of consent to sexual activity in Indiana is 16 pursuant to I.C. 35-42-4-9. 906 N.E.2d at 223. The trial court dismissed the charge, and the State appealed.

Salter had found that it was illogical than an adult man could legally show his penis to a 16-year-old through consensual activity in person, but not through photography. Therefore, it could not be understood as "patently offensive to prevailing standards," which is a necessary element of the definition of "harmful to minors" in I.C. 35-49-2-2. Id. The Supreme Court found, however, that the plain text of I.C. 35-49-3-3 clearly encompassed Thakar's conduct. The court further found there was no conflict between I.C. 35-49-3-3(a)(1) and I.C. 35-42-4-9 because Thakar could comply with both statutes simultaneously. "[W]ith respect to a 16-year-old, consensual sexual activity in person is permitted, the dissemination of a sexually explicit photograph (consensually or otherwise) is not." The case was remanded to the trial court, and the state gets to try Thakar under the dissemination statute.