

## **Summary of SC91195, *State of Missouri v. Kasim Faruqi***

Appeal from the St. Louis County circuit court, Judge Mark D. Seigel  
Argued and submitted May 4, 2011; opinion issued August 2, 2011

**Attorneys:** Faruqi was represented by Murry A. Marks and Jonathan D. Marks of The Marks Law Firm LLC in St. Louis, (314) 993-6300; and the state was represented by James B. Farnsworth and Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321, and Sheila Whirley of the St. Louis County prosecutor's office in Clayton, (314) 615-2600.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man convicted of attempted enticement of a child appeals his conviction on grounds that the enticement law is void for vagueness. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the man's conviction. Because the man was convicted of attempted enticement of a child, his challenge that the portion of the statute dealing with actual enticement of a child is unconstitutionally vague when the "victim" actually is an adult law enforcement officer does not apply to him. The man's confession was voluntary and, therefore, was not admitted into evidence improperly. Further, the man cannot claim the seizure of data from his work computer was unconstitutional because he conceded he had no privacy right in his employer's computer.

**Facts:** The Maryland Heights police department conducted an undercover sting operation in which a police officer logged on to an internet chat room posing as a 14-year-old girl named Kaitlin. At one point, "Kaitlin" received an unsolicited instant message from 33-year-old Kasim Faruqi. She told him at the beginning of the chat that she was 14. Within 20 minutes, he expressed an interest in meeting her in person. During the conversations Faruqi had with "Kaitlin" online and via telephone, he stated that he wanted to hug and kiss "Kaitlin," touch her breasts, perform and receive oral sex, and have unprotected sex with her. He told "Kaitlin" that he knew that this would be illegal because she was only 14, and he made her promise that she would not tell anyone. Ultimately, they agreed to meet at a park, where he was arrested.

After Faruqi was advised of and waived his rights against self-incrimination and to counsel, an unarmed detective interviewed him. The detective told Faruqi that the police were investigating complaints by a 14-year-old girl's parents, who were concerned that he was trying to have sex with their daughter. During the interview, when Faruqi told the detective that he was from Pakistan, the detective asked him about the customs of his home country and his familiarity with United States laws "as far as having sex with a minor." Faruqi admitted that he had chatted online with a girl he thought was 14 years old and that he had asked her if she would engage in sexual acts with him. Faruqi also prepared and signed a written statement that contained admissions that he had chatted with a 14-year-old girl, that they had talked about sex and that they had arranged to meet. Faruqi signed a "consent to search" form permitting a search of the computer at his workplace. Police seized the computer and discovered on it data fragments corresponding with the chats between Faruqi and "Kaitlin." The state charged Faruqi with

attempted enticement of a child under section 566.151, RSMo 2010. The trial court found Faruqi guilty and sentenced him to five years in prison. He appeals.

**AFFIRMED.**

**Court en banc holds:** (1) Faruqi's argument that the enticement statute is unconstitutionally vague in application fails. He argues the vagueness comes when the statute is applied to someone charged with enticing a child when the person enticed is actually a police officer masquerading as a child, but he was charged with attempted enticement, not actual enticement, and so his vagueness challenge has no application to him. For a charge of attempted enticement of a child, it is no defense that the underlying offense of enticement of a child was legally or factually impossible because the victim was not a child but an adult police officer masquerading as a child. Faruqi's admitted belief that he was communicating with a person under the age of 15 years for the purpose of sex was sufficient for criminal liability to attach regardless of the victim's true identity. The statute puts a person of ordinary intelligence on notice that, if he or she is at least 21 years old, it is a crime to entice a person younger than 15 years for the purpose of engaging in sexual conduct.

(2) Faruqi's incriminating statements were not involuntary. He was 33 years old at the time of the interview with the detective, is well-educated, was advised of his rights against self-incrimination and to counsel before the interview began, indicated he understood them, and signed a written waiver. Faruqi wrote his statement in English and indicated no difficulty understanding English. He was not handcuffed at the time of the interview, which the record showed lasted only about two hours. Faruqi was not threatened with deportation and, while the detective did falsely represent that there was a real 14-year-old victim and that police were responding to the complaints made by the victim's parents, that misrepresentation did not make the confession involuntary because the subterfuge did not offend societal notions of fairness and nothing about it was likely to produce an untrustworthy confession.

(3) Faruqi's claim that the data fragments seized from his computer were unreasonably seized is barred because he maintained no subjective expectation of privacy in his work computer. When he consented to the search of the work computer, he demonstrated that he maintained no personal expectation of privacy in the content stored on it. He further said he had no right to give or refuse permission to search his work computer. Because there was no subjective expectation of privacy as to the work computer, Faruqi is barred from claiming that the computer was searched in violation of his Fourth Amendment rights.