

## OBSCENITY

### **Sufficient Evidence to Support Conviction of Disseminating Obscenity**

*State v. Mueller, \_\_\_ N.C. App. \_\_\_, 647 S.E.2d 440 (17 July 2007).*

The defendant was convicted of disseminating obscenity to his daughter by showing her photographs of people engaged in sexual acts. The daughter testified that the photographs shown to her in court were substantially similar to the photos that the defendant had shown her. The court ruled that the state was not required to produce the exact photos the defendant had shown to his daughter.

### **1. Obscenity--Disseminating Harmful Materials To Minors--Disseminating Obscenity To A Minor Under The age Of Sixteen Years--Motion To Dismiss--Sufficiency Of Evidence**

*State v Hill 179 NCA 1 (2006)*

The trial court did not err by denying defendant's motion to dismiss charges occurring between 5 September and 7 September 2003 including two counts of disseminating harmful materials to minors and one count of disseminating obscenity to a minor under the age of sixteen years because: 1) there was sufficient evidence that defendant provided obscene and harmful materials to three minors on the dates charged to carry those charges to the jury; 2) although defendant offered evidence tending to show that he was not in town on those dates, he inaccurately characterizes his evidence as uncontradicted when the State offered evidence from the minors themselves that defendant provided pornography to them on each occasion that they visited defendant's home including these September dates, and defendant's evidence merely raised a credibility issue which was for the jury to resolve; and 3) although defendant contends that it was inconsistent for the jury to find him not guilty of providing alcohol to the boys on the September dates in question while finding him guilty of providing those same boys with obscene and harmful materials on the same dates, defendant abandoned his argument under N.C. R. App. P. 28(b)(6) by failing to cite authority for his position. N.C.G.S. §§ 14-190.7, 14-190.15.

### **Constitutional Law--Overbreadth--Child Pornography Statutes--Case-By-Case Analysis Of Fact Situations**

*City of Littleton v. Z.J. Gifts (7 June 2004)*

1. For "adult business" licensing scheme to satisfy First Amendment,

licensing scheme must not only provide assurance of speedy access to courts for review of adverse licensing decisions, but also must provide assurance of speedy court decisions; 2) however, when city's "adult business" licensing scheme simply conditioned operation of adult business on compliance with neutral and nondiscretionary criteria and did not seek to censor content, language in ordinance providing for judicial review of adverse licensing decisions in accordance with state's ordinary review procedures was sufficient to satisfy First Amendment requirements).

*City of Littleton v. Z.J. Gifts (7 June 2004)*

N.C.G.S. §§ 14-190.17A(a) and 14-190.13 which protect against child pornography are not overbroad even though they extend to images of minors which do not require a live minor for their production and even though defendant contends they allegedly criminalize material that does not violate community standards, because: 1) both the Court of Appeals and our Supreme Court have addressed this very issue and concluded that the statutes are constitutional; and 2) whatever overbreadth may exist should be cured on a case-by-case analysis of fact situations to which their sanctions assertedly may not be applied.

### **1. Constitutional Law--Vagueness--Excessive Fines Clause--Dissemination Of Obscenity Statute**

*State v. Sanford Video & News, Inc. 146 NCA 554 (2001)*

The trial court did not abuse its discretion by fining defendant corporation \$50,000.00 under N.C.G.S. § 15A-1340.17(b) for dissemination of obscenity for selling two adult-theme magazines to a police officer in violation of N.C.G.S. § 14-190.1 even though defendant contends N.C.G.S. § 15A-1340.17(b) is unconstitutional on the grounds that the statute is vague or that it violates the Excessive Fines Clause under U.S. Const. amend. VIII and N.C. Const. art. I, § 27, because: 1) the legislature properly delineated the standards that should be followed in setting a fine as punishment for the crime; and 2) defendant's fine is not grossly disproportionate to the crime committed when the crime was a felony, the legislature has determined this crime to be more than minimally harmful to the community, the money to be forfeited was directly related to illegal activities, and the fine is not excessive when compared to defendant's financial resources available to pay the fine.

### **2. Obscenity--Sexually Oriented Business--Belief Engaged In Activity Protected By Constitution**

*State v. Sanford Video & News, Inc. 146 NCA 554 (2001)*

The trial court did not abuse its discretion by fining defendant corporation \$50,000.00 under N.C.G.S. § 15A-1340.17(b) for dissemination of obscenity for selling two adult-theme magazines to a police officer in violation of N.C.G.S. § 14-190.1 even though defendant contends it believed it was engaged in activity protected by the Constitution, because: 1) dissemination of obscenity is not protected by any constitutional guarantees; 2) defendant has previously been confronted by the laws prohibiting the dissemination of obscenity; and 3) defendant's failure to challenge its underlying conviction for disseminating obscenity means it cannot now challenge its punishment on the theory that it's underlying conduct was not illegal.

### **3. Obscenity--Sexually Oriented Business--Mitigating Factor Of Reasonable Belief Conduct Was Legal**

*State v. Sanford Video & News, Inc. 146 NCA 554 (2001)*

The trial court did not err in a dissemination of obscenity case by failing to find the existence of the N.C.G.S. § 15A-1340.16(e)(1) statutory mitigating circumstance that defendant corporation reasonably believed its conduct was legal, because there is significant reason to doubt defendant's credibility that it presumed its conduct was lawful when defendant's employee was previously convicted of this same offense.

### **1. Obscenity, Pornography, Indecency, or Profanity § 16 (NCI4th) Jury Instructions On Two Magazines Right To Unanimous Jury Verdict Not Abridged**

*State v. Johnston, 123 N.C. App. 292 (1996) 473 S.E.2d 25*

In a prosecution of defendant for disseminating obscene material, the trial court did not err in refusing to instruct the jury that there must be unanimous agreement that at least one of the two magazines purchased by a detective was obscene, and this refusal did not violate defendant's right to a unanimous jury verdict, since the situation in this case involved alternative methods of establishing a single offense rather than two separate offenses.

### **2. Obscenity, Pornography, Indecency, or Profanity § 13 (NCI4th) Contemporary Community Standards Evidence Unnecessary**

*State v. Johnston, 123 N.C. App. 292 (1996) 473 S.E.2d 25*

In a prosecution of defendant for disseminating obscene material, evidence of what constituted "contemporary community standards" was unnecessary.

**3. Obscenity, Pornography, Indecency, or Profanity § 14 (NCI4th)  
Defendant's Knowledge Of Content Of  
Materials Disseminated Sufficiency Of Evidence**

*State v. Johnston, 123 N.C. App. 292 (1996) 473 S.E.2d 25*

In a prosecution for dissemination of obscene material, there was sufficient circumstantial evidence that defendant knew the character and the content of the materials to be distributed.

**7. Evidence and Witnesses § 543 (NCI4th) Dissemination Of Obscene  
Magazines Sex Toys And Movies  
Relevancy Best Evidence Rule Not Violated**

*State v. Fly, 127 N.C. App. 286 (1997)*

A detective's testimony describing various sex toys available for sale in a store and movies available for viewing at the store were relevant in a prosecution for disseminating obscene magazines to show defendant's knowledge of the character and content of the magazines. Furthermore, this testimony did not violate the best evidence rule because the content of the available movies was not at issue in the case.