

CREATING, BUYING, PROCURING, OR POSSESSING OBSCENE MATERIAL WITH THE INTENT TO DISSEMINATE. G.S. 14-190.1(e). FELONY.

The defendant has been charged with [creating] [buying] [procuring] [possessing] obscene material, with the intent to disseminate.

For you to find the defendant guilty of this offense, the State must prove two things beyond a reasonable doubt:

First, that the defendant knowingly [created] [bought] [procured] [possessed] obscene material.

Material is obscene when judged with reference to ordinary adults:

<sup>a</sup>The average person applying contemporary community standards would find that the material depicts or describes sexual conduct in a patently offensive way (*define sexual conduct pertinent to the case as set out by the statute*<sup>1</sup>). Material is patently offensive when, taken as a whole, it affronts contemporary community standards relating to the description or representation of sexual matters.

<sup>b</sup>And, the average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex. A prurient interest is an

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<sup>1</sup>G.S. 14-190.1(c) defines "sexual conduct" as "(1) vaginal, anal or oral intercourse, whether actual or simulated, normal or perverted; or (2) masturbation, excretory functions, or lewd exhibition of uncovered genitals; or (3) an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume."

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unhealthy, abnormal, lascivious, shameful or morbid sexual interest.

Contemporary community standards must be interpreted as the current standards here in your community.<sup>2</sup> Both of these tests of obscenity that I have related to you must be considered and judged with reference to the average adult in this community, rather than the most tolerant or the most prudish.

The obscene character of the materials, if any, may be determined by you, based on the viewing of the alleged obscene material. In addition to considering all of the evidence presented, you are entitled to draw on your understanding and knowledge of the views of the average adult person in this community and of the tolerance of the average adult person in this community in making the required determinations which are necessary for the resolution of this case.

In determining whether certain material is obscene, you should consider the entire (*describe material, e.g., "film"*) as a whole and not part by part. You may also consider whether the predominant theme and purpose of the material, when viewed as a whole and not part by part, is an appeal to the prurient interest of the average adult person in your community.

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<sup>2</sup>See *S. v. Mayes*, 323 N.C. 159 (1988), holding that the trial judge need not specify the geographic limits of the community, nor must the jury reach a consensus as to the community's boundaries.

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<sup>c</sup>And, applying the reasonable person standard, you find that  
the material taken as a whole lacks serious literary, artistic,  
political or scientific value.<sup>3</sup>

And Second, that the defendant acted with the purpose and  
intent<sup>4</sup> of disseminating the obscene material unlawfully, and  
that the defendant knew the nature and content of the material.<sup>5</sup>  
(It is not necessary that he intended or believed the material to  
be obscene.)

Material is disseminated by:

<sup>a</sup>[selling] [offering to sell] [agreeing to sell]

<sup>b</sup>[delivering] [offering to deliver] [agreeing to deliver]

<sup>c</sup>[providing] [offering to provide] [agreeing to provide]

<sup>d</sup>[presenting] [directing] a [play] [dance] [performance] or  
[participating directly in that portion of a [play] [dance]  
[performance] which makes it obscene]

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<sup>3</sup>Sections a, b, and c of the second element conform with the three-prong  
test for obscenity in Miller v. California, 413 U.S. 15 (1973), as modified by  
Smith v. U.S., 431 U.S. 291 (1977) and Pope v. Illinois, 107 S.Ct. 1918  
(1987).

<sup>4</sup>For further definition of intent, see N.C.P.I.--Crim. 120.10.

<sup>5</sup>Smith v. California, 361 U.S. 147 (1959).

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<sup>e</sup>[publishing] [exhibiting] or [making available]  
<sup>f1</sup>[exhibiting] [offering to exhibit] [agreeing to exhibit]  
<sup>2</sup>[presenting] [offering to present] [agreeing to present]  
<sup>3</sup>[renting] [offering to rent] [agreeing to rent]  
<sup>4</sup>[selling] [offering to sell] [agreeing to sell]  
<sup>5</sup>[delivering] [offering to deliver] [agreeing to deliver]  
<sup>6</sup>[providing] [offering to provide] [agreeing to provide]  
any [writing] [picture] [record] [representation or embodiment]  
[still (or) motion picture] [film] [filmstrip] [projection slide]  
[sound recording] [sound tape] [sound track].

If you find from the evidence beyond a reasonable doubt that  
on or about the alleged date the defendant knowingly [created]  
[bought] [procured] [possessed] obscene material and that the  
defendant acted intentionally with the purpose of disseminating  
such obscene material unlawfully, it would be your duty to return  
a verdict of guilty. If you do not so find or have a reasonable  
doubt as to one or more of these things, it would be your duty to  
return a verdict of not guilty.

NOTE WELL: *Simple possession or purchase of  
obscenity does not violate the statute. A violation  
occurs when the possession or the purchase is with the  
intent and for the purpose of disseminating obscenity.*