

**PUBLIC COMMUNICATION OF OBSCENITY**

**(N.J.S.A. 2C:34-4b)**

The defendant is charged with the offense of public communication of obscenity. The indictment reads in part as follows:

**(Read Indictment)**

The pertinent part of the statute on which this indictment is based reads as follows:

(Use that portion that applies to your case)

(A) A person who knowingly publicly communicates obscene material . . . is guilty of a crime . . .

or

(B) A person who knowingly causes or permits obscene material to be publicly communicated on property he owns or (leases) or (operates) is guilty of a crime . . .

In order for you to find the defendant guilty of this offense, the State must prove beyond a reasonable doubt each of the following elements:

**(Elements as to A)**

1. That (exhibit) is obscene material;
2. That the obscene material was communicated publicly by the defendant;
3. That the defendant made that communication knowingly.

That is, (he/she) either had knowledge of the character and content of the material (or film) described in the indictment, or (he/she) failed to exercise reasonable inspection which would disclose its character and content.

**(Elements as to B)**

1. That (exhibit) is obscene material;
2. That the obscene material was communicated publicly on property that the defendant owns (leases) (operates);
3. That the defendant either caused or permitted another person to publicly communicate that obscene material;

4. That the defendant did that knowingly, that is, he either had knowledge of the character content of the material (film), or he failed to exercise reasonable inspection which would disclose its character and content.

Under our law you may infer that the defendant made the communication knowingly or caused or permitted it to be made knowingly if you find beyond a reasonable doubt that (he/she) publicly communicated obscene material.

However, you are not required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in this case warrant any inference which the law permits the jury to draw.

**(Use when applicable)**

In considering whether or not to draw the inference, you are reminded that in the exercise of (his/her) constitutional rights the accused need not take the witness stand and testify.

Public communication of obscene material raises a permissible inference only that the defendant acted knowingly. It does not raise a mandatory inference. That is, you may accept or reject such inference after considering all the other evidence in the case. If you accept the inference, you should weigh it in connection with all the other evidence, keeping in mind that the burden of proof is upon the State to prove guilt beyond a reasonable doubt. The permissible inference to which I have referred does not shift that burden of proof.

"Obscene material" is defined as any description, narrative account, display, or depiction of a specified anatomical area or specified sexual activity contained in, or consisting of, a picture or other representation, publication, sound recording, live performance or film, which by means of posing, composition, format or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the area or activity.

"Specified anatomical area" is defined as:

- (1) Less than completely and opaquely covered human genitalia, pubic region, buttock or female breasts below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernible turgid state; even if covered.

"Specified sexual activity" is defined as:

- (1) Human genitals in a state of sexual stimulation or arousal; or
- (2) Any act of human masturbation, sexual intercourse or deviant sexual intercourse; or

(3) Fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast.

"Publicly communicate" is defined as to display, post, exhibit, give away or vocalize material in such a way that its character and content may be readily and distinctly perceived by the public by normal unaided vision or hearing when viewing or hearing it in, on, or from a public streets road, thoroughfare, recreation or shopping center or area or public transportation facility or vehicle used for public transportation.

If you find that the State has proved all of the foregoing elements of the offense beyond a reasonable doubt, you should find the defendant guilty. If the State has failed to prove any of the elements of the offense beyond a reasonable doubt, you must find the defendant not guilty.