

24.5 PROHIBITION OF CERTAIN ACTS IN CONNECTION WITH OBSCENE MATERIALS — POSSESSION WITHOUT INTENT TO SELL

§ 847.011(2), Fla. Stat.

To prove the crime of (crime charged), the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) knowingly had in [his] [her] possession, custody, or control any of the material charged without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same.
2. The material charged in this case is obscene. In order for such material to be legally obscene, each of the following facts must be found:
 - a. The average person applying contemporary community standards of _____ County, Florida, would find that the material, taken as a whole, appeals to the prurient interest.
 - b. The material depicts or describes sexual conduct in a patently offensive way.
 - c. The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.
3. The defendant had knowledge of the nature, character, or content of the materials.

Definitions

Prurient Interest

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

Patently Offensive

In order to be obscene, the dominant theme of the material must depict or describe sexual conduct in a patently offensive way, that is, it must do so in a way that offends the contemporary community standards of _____ County. Not all descriptions or depictions of sexual conduct go substantially beyond customary community standards of decency for it to be patently offensive. You must determine the collective view of the community in evaluating this element of the offense.

In order for you to find that this material is obscene, you must also find that, taken as a whole, it lacks serious literary, artistic, political, or scientific value. If the material has such value, it is not obscene even if it appeals to the prurient interest in sex, and even if it depicts or describes sexual conduct in a patently offensive way. In judging whether the value is serious, you should consider the intent of the material. If it is a serious literary or artistic effort, or if it attempts to convey scientific information, or a political point of view, it cannot be obscene. If the primary intent is to appeal to the prurient interest, then the mere insertion of literary, artistic, political, or scientific materials irrelevant to the predominant theme will not prevent you from determining that the material is obscene. Sex can be a legitimate subject for literature, art, scientific inquiry, or

political argument, and such serious treatments of sex, even if appealing to the prurient interest and patently offensive, cannot be obscene.

Optional Definition

"Morbid interest" means diseased, dwelling on the gruesome, or sick.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.