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SUPREME COURT OF SOUTH AUSTRALIA

CARTER v SAMUELS

Hogarth J

13 February, 8 March 1974 — (1974) 8 SASR 1

CRIMINAL LAW – SEX AIDS SHOP – ARTICLES OF A SEXUAL NATURE EXHIBITED – SHOPOWNER CHARGED WITH "EXHIBITING" INDECENT ARTICLES – ARTICLES IN THEMSELVES NOT INDECENT – WHETHER DISPLAY TO BE LOOKED AT AS A WHOLE – CHARGE FOUND PROVED – WHETHER MAGISTRATE IN ERROR.

One of the appeals in this matter arose from a conviction of the appellant for having exhibited indecent matter at his shop known as The Love Art Shop. The indecent matter alleged consisted of eleven "sex aids" and accompanying texts and diagrams.

HELD: Magistrate not in error.

1. The text which dealt separately with each of the displayed articles made it clear that they were intended to improve the enjoyment or efficiency of sexual intercourse. Some of the diagrams were unintelligible without recourse to the printed word, but one diagram showed the genital organs of a man and woman, with a contraption attached, in the act of sexual intercourse. In others, the printed word made the diagram intelligible.

2. It was not necessary for the prosecution to establish that each object, and every piece of text and each diagram, looked at separately, was indecent. The prosecution case was that the display was to be looked at as a whole. Considered in this light, it contained such indecent matter; in particular the diagram referred to and the accompanying text and object.

HOGARTH J: ... The matter in question consisted of a display board with eleven mystifying-looking rubber objects suspended from cords, ten of which were associated with a text, mostly with accompanying diagrams. The board was displayed inside the shop, and, speaking for myself, if shown any of the objects without some accompanying explanation, I would have no idea what it was or what function it was intended to fulfil. This was the view also of the Special Magistrate. He thought, as I think, that a display of these articles without accompanying texts or diagrams, could not be held to be indecent, as in his view their use would not be understood by the general public. Counsel for the appellant further submitted that the text, taken alone, is not indecent; and that consequently that the display as a whole could not be held to be indecent.

The text which deals separately with each of the displayed articles makes it clear that they are intended to improve the enjoyment or efficiency of sexual intercourse. Some of the diagrams are unintelligible without recourse to the printed word, but one diagram shows the genital organs of a man and woman, with a contraption attached, in the course of sexual intercourse. In others, the printed word makes the diagram intelligible.

I do not think it necessary for the prosecution to establish that each object, and every piece of text and each diagram, looked at separately, was indecent. The prosecution case is that the display is to be looked at as a whole. Considered in this light, I think that it contains such indecent matter; in particular the diagram to which I have referred and the accompanying text and object. ...