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Supreme Court rules obscene speech law unconstitutional

Stems from case of inmate who made calls to girlfriend

By Stephen Gurr

Staff Writer

Apparently, you can tell your sweetheart anything over the phone, after all.

The Georgia Supreme Court this week struck down a state law as unconstitutional after hearing evidence of a Forsyth County inmate who was prosecuted under an obscure statute which bars "lewd or indecent" speech over the phone.

Authorities said that in June and July of 2003, Anthony McKenzie, then 17, made five collect phone calls from the Forsyth County jail to a 14-year-old girl he knew, during which he made several graphic proposals of a sexual nature. The case against McKenzie was instigated when the girl's mother got the phone

bill and went to authorities, who reviewed the phone conversations. All outgoing phone conversations from inmates at the Forsyth County jail are recorded.

McKenzie was convicted in a state court bench trial after admitting to the content of the phone conversations. Judge Philip Smith found him guilty of two counts of making a phone call "with conversations containing obscene, lewd, lascivious, filthy, and indecent comments, requests, suggestions and/or proposals," according to the statute. McKenzie, who had originally been jailed on a probation violation, was sentenced to two years probation.

McKenzie challenged the constitutionality of the law as it relates to the first amendment right of free speech. The law does not specify the

age of the recipients of such phone calls, indeed, such speech is banned among consenting adults, McKenzie's lawyers argued.

"I believe the state has every right to regulate offensive speech as it relates to a minor," said McKenzie's lawyer, Parker McFarland. "The problem with this statute is that it applies to adults and minors. We were able to show the court that the statute was just entirely too broad."

McFarland had some prominent help in the case, with the American Civil Liberties Union of Georgia weighing in with a 22-page brief in support of McKenzie.

"The ACLU filed this brief not to make the world safe for obscene

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