

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

FREE SPEECH COALITION, INC.,) 09-cv-4607
et al,)
)
Plaintiffs,)
)
)
vs.)
)
THE HONORABLE ERIC HOLDER, JR.,)
in his Official Capacity as)
Attorney General of the United)
States,) Philadelphia, PA
) June 5, 2013
Defendant.) 9:10 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE MICHAEL M. BAYLSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: J. MICHAEL MURRAY, ESQUIRE
LORRAINE R. BAUMGARDNER, ESQUIRE
BERKMAN, GORDON, MURRAY & DEVAN
55 Public Square - Suite 2200
Cleveland, OH 44113-1949
615 Chestnut Street - Suite 1250
Philadelphia, PA 19105

For the Defendant: KATHRYN WYER, ESQUIRE
HECTOR G. BLADUELL, ESQUIRE
JAMES J. SCHWARTZ, ESQUIRE
NATHAN MICHAEL SWINTON
U.S. DEPARTMENT OF JUSTICE
20 Massachusetts Avenue
Washington, D.C. 20530

Audio Operator: JANICE LUTZ

Transcribed by: DIANA DOMAN TRANSCRIBING
P.O. Box 129
Gibbsboro, New Jersey 08026-0129
Office: (856) 435-7172
Fax: (856) 435-7124
Email: dianadoman@comcast.net

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1 looking at the photographs that the subjects are over the age
2 of 18?

3 A I think for many or most of my photographs, you could say
4 with certainty that they're over 18, and for other photographs,
5 you would want some evidence about that.

6 MR. MURRAY: That's all I have. Thank you, Your
7 Honor.

8 THE COURT: Recross?

9 MR. SCHWARTZ: No, Your Honor.

10 THE COURT: All right. Thank you, Mr. Steinberg.
11 Next witness, please.

12 MR. MURRAY: Your Honor, we will now call the
13 plaintiff, Carlin Ross.

14 THE CLERK: Raise your right hand.

15 Carlin ROSS, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Please be seated. Please state your full
17 name and spell your last name for the record.

18 THE WITNESS: My name is Carlin Ross. That's
19 R-O-S-S.

20 DIRECT EXAMINATION

21 BY MR. MURRAY:

22 Q And Ms. Ross, tell the Court what city you live in.

23 A New York City.

24 Q Okay.

25 THE COURT: How do you spell your first name?

1 A I have.

2 Q And what is the name of the book?

3 A How to Make a Girl Come.

4 Q Okay. And when is that -- when was that published?

5 A This past February, 2013.

6 Q Now, tell the Court who Betty Dodson is.

7 A Betty Dodson is an author. She had an international best
8 seller, but what she's best known for is she started the sex
9 positive feminist movement. So as some women were fighting for
10 equal pay, she was fighting for equality in the bedroom and
11 sexual rights in addition to contraception and all of those
12 things, but about women connecting to their bodies. So it was
13 heavy body image and kind of female sexual liberation.

14 Q Okay. And do you know how -- and do you still work with
15 Betty Dodson?

16 A Yes.

17 Q Is she still your business partner?

18 A She is.

19 Q How old is Betty now?

20 A Betty is 84 years old.

21 Q Okay.

22 A Years young, I should say.

23 Q And tell the Court the work that you do.

24 A So I'm editor and chief of the website. So I run the
25 website from a technical perspective, and then we have 25

1 bloggers. So I manage all of their writing. I work with
2 Betty. We released her memoir. I also produce the films that
3 we -- we released and just manage all the -- I'm basically
4 taking all things Betty Dodson, making it digital.

5 Q Okay. And what is the philosophy that you and Betty
6 Dodson communicate?

7 A Our philosophy is that masturbation is the foundation of
8 all human sexuality and that to kind of -- you have to connect
9 to your body and appreciate your sex organ. We find -- we've
10 traveled the world globally, and the number one issue that kind
11 of blocks normal sexual development is genital shame. So our
12 -- our thing is about connecting to your sex organ,
13 appreciating it, connecting to your body and then being able to
14 connect to a partner and have intimacy and positive
15 relationships.

16 Q Okay. And you mentioned that you have videos or DVDs.
17 What kind of DVDs do you create, you and Betty?

18 A The majority of our work is just female masturbation.

19 Q Okay. And where do you create these videos?

20 A Most of them are shot in Betty's livingroom.

21 Q Okay. And she lives where?

22 A She lives at 121 Madison Avenue.

23 Q But I mean she's in New York City too?

24 A She's in New York City. Yes.

25 Q Okay. And is that where business records are maintained

1 the Genital Art Gallery?

2 A We do.

3 Q Okay. And do you know when approximately that was
4 originally created or approximately when?

5 A I believe 1998.

6 Q Okay. And do you know what its purpose is?

7 A The purpose is that most people think there's something
8 wrong with their genitals. The number one question we get is
9 am I normal. So the purpose was to show that there's a range
10 of genital styles. Some men are circumcised. Some men aren't.
11 Some are small. Some are large. Some have larger, you know,
12 testicles. Some don't. And with women, there's a whole range
13 of looks to -- to the labia, to colors, to browns, to purples,
14 to pinks. So it was kind of to heal genital shame.

15 Q And what are the requirements? How does it work exactly?

16 A You click on the site, and, you know, now we have to have,
17 you know, the ID and everything. So that kind of stuff, but
18 before, you would submit images of your genitals and then a sex
19 essay about your sexuality, something about yourself personal,
20 and then you would submit it to the site, and then I would go
21 in and review it and then publish it to the site.

22 Q And what would your review consist of?

23 A Well, you know, kind of -- I mean, the basics in the
24 beginning would be just formatting, to make sure everything was
25 formatted correctly. Then you're looking at the images, yeah,

1 and make sure something is in keeping with our brand. You
2 know, we're a feminist brand. I don't want crude things. I
3 don't want minors. You know what I mean? You want to keep
4 things sex positive. So I would review to make sure. I want
5 healthy sexuality.

6 Q And you say that there were essays that had to be
7 submitted with this?

8 A Yes.

9 Q And what kinds of topics did you expect the essays to
10 cover?

11 A People would talk about their relationship to their
12 bodies. They would talk about the first time they had an
13 orgasm. They would talk about how they masturbate. They could
14 be someone that's older talking about how they rediscovered
15 their sexuality after giving birth or menopause or things like
16 that.

17 Q And then you would post the image?

18 A Yes.

19 Q And the essay or just the image?

20 A Yeah. No. Yeah. With the essay together.

21 Q Okay.

22 A We wanted it to have context.

23 Q Now, did the Genital Art Gallery communicate, in your
24 view, a serious educational message?

25 A Yes. I believe so, because --

1 Q And what is that message?

2 A That all genitals are beautiful and that there's a range
3 and that you can find something that looks like you, which is
4 very healing, because pornographic content, there's an
5 aesthetic, and the majority of performers get labiaplasty and
6 they bleach to make things pink. So because we don't have sex
7 ed in our schools and we've had ten years of abstinence only,
8 when you look at pornography, the young girls, they write in
9 and they go that doesn't look like me, there's something wrong.
10 So our whole thing was to say no, you're just different.

11 Q Now, I want to show you on the ELMO, what we call the
12 ELMO, Plaintiff's Exhibit 51 --

13 A Yes.

14 Q -- and ask you if you can identify that.

15 A That's a submission to the Genital Art Gallery.

16 Q And is that a representative sample of what comes in?

17 A Yes.

18 Q And that happened to be somebody who says that at the age
19 of 77, many people would consider me unable to get sexually
20 excited, is that correct? That's --

21 A That is correct.

22 Q -- how the essay begins?

23 A Uh-huh.

24 Q While I'm here, I should have shown you Plaintiff's
25 Exhibit 52 so that we would have that covered. What is that?

1 A That's the video page, shows all the clips that are
2 available for purchase.

3 Q On your website?

4 A Yes.

5 Q Now, was anonymity at all important to the people who were
6 submitting materials for the Genital Art Gallery?

7 A Very much so, because these are real citizens. They have
8 careers, jobs, and families, and also, having a database of
9 people's licenses sitting around, you know, for identity theft,
10 it's just not something you'd feel comfortable, I think, as an
11 average person submitting a license to a website.

12 Q So there came a time when the --

13 MR. BLADUELL: Objection, Your Honor.

14 THE COURT: Overruled.

15 BY MR. MURRAY:

16 Q There came a time when 2257 was amended and expanded to
17 cover not only actual sexual acts, but lascivious exhibition of
18 the genitals and simulated lascivious exhibition of the
19 genitals, and did you become aware of that change in the law at
20 some point?

21 A Yes.

22 Q And did that change in the law cause you to determine
23 whether it would have an effect upon the Genital Art Gallery?

24 A Yes. I was a little worried, because there are criminal,
25 you know, penalties, jail time, and when Betty and I started

1 first working together, we merged our websites. So I took a
2 database that she had of images and just poured it over, and so
3 I couldn't prove dates, and I know there was cutoffs in the
4 law. So I was a little uneasy about having all the images up,
5 because, you know, there's no precedent. I don't know what
6 lascivious means as it's interpreted in the Courts.

7 Q And it was your understanding that if the images had been
8 created after a certain date, they would be covered by the law?

9 A Yes.

10 Q And did I understand you to say that there were some
11 images as to which, because of the conversion, you would not be
12 able to prove the date of creation?

13 A Yes.

14 Q And so what did you do about those images?

15 A Well, I mean, Betty and I talked about it, and we decided
16 to, you know, pull them from the site.

17 Q And so did you remove those images from the site?

18 A We did.

19 Q And approximately how many images did you remove from the
20 Genital Art Gallery?

21 A I think about -- I think we had 2,000, and there -- there
22 are two or 300 that remain. So I guess about 17, 1,800 images
23 that we -- that we pulled.

24 Q And was that a direct result of the change in law of 2257
25 and 2257(a)?

1 A Yes.

2 Q Now, then thereafter, what else did you do from that point
3 forward in order to obtain additional images for your Genital
4 Art Gallery and still comply with the law?

5 A Well, we had to, you know, put a new page requesting a
6 scanned copy of a photo ID and a signed release.

7 Q And what happened to the number of submissions that were
8 coming in?

9 A They just stopped almost completely.

10 Q Okay. What was the normal number of submissions you
11 generally received prior to that?

12 A We'd get about ten a week.

13 Q Okay. And so maybe over 500 a year?

14 A Yes.

15 Q And since you imposed that requirement, how many have you
16 gotten with people submitting their photo IDs along with their
17 genital pictures?

18 A I think we -- two or three.

19 Q Over the past how many years?

20 A 2009? Four years, I guess.

21 Q Okay. So in terms of the Genital Art Gallery then, it now
22 consists of instead of the 2,000 images, approximately how many
23 images?

24 A I think it's like between two and 300.

25 MR. MURRAY: Okay. Your Honor, I would offer into

1 evidence Plaintiff's Exhibit 51, 52, 118, 117, 50, 47, 46, and
2 45.

3 THE COURT: Okay. Couple -- oh, cross-examine. Go
4 ahead first.

5 CROSS-EXAMINATION

6 BY MR. BLADUELL:

7 Q Good afternoon, Ms. Ross.

8 A Hi, Hector.

9 Q You testified on direct that 75 percent of the performers
10 in your videos were women over 25, correct?

11 A Correct.

12 Q But there are some of them that have been under 25,
13 correct?

14 A Correct.

15 Q And you identified one that was 21, correct?

16 A Correct.

17 Q Now, are you familiar with the title Orgasmic Women?

18 A Yes.

19 Q And in that video, the women at the end of the video tell
20 their ages?

21 A Yes.

22 Q And one of them says she's 21?

23 A Yes.

24 Q And another one says she's 23?

25 A Yes.

1 Q And another one says she's 24?

2 A Uh-huh. Yes.

3 Q And another one says she's 25.

4 A Uh-huh. Yes.

5 Q And you've also said that the Genital Art Gallery has
6 included depictions of people from as young as 20 years old,
7 correct?

8 A Correct.

9 Q Now, in the Genital Art Gallery, before 2009, you didn't
10 require IDs of the people, correct?

11 A Correct.

12 Q And what you used to determine their ages was your own
13 perception from looking at their genitals of how old they were,
14 correct?

15 A Looking at the -- and reading their essay.

16 Q Okay.

17 A You can glean a lot from how someone writes, grammar, what
18 they're talking about. Yes.

19 Q But you're not an expert in looking at someone's genital
20 and determining how old they are, correct?

21 A Yes. Correct.

22 Q And the essay that you require them to write, you didn't
23 require them to state the age that they were, correct?

24 A Correct.

25 Q In fact, let me show you Exhibit 44I. This is a document