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HIGH COURT PONDERING TOWN'S LIABILITY IN MAN'S DEATH

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NEWS 04C

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The Ohio Supreme Court yesterday heard arguments about a city's possible liability when someone is killed during a public fireworks display.

The city of Reynoldsburg and Truro Township insist they are immune from a lawsuit involving a 37-year-old man killed by part of a fireworks shell on July 4, 1996.

Attorneys for the family of Daniel Ryll said spectators were allowed to sit too close to the fireworks show, held in Huber Park.

Public officials also were negligent when they signed a permit the day after Ryll's death, attorneys argued.

"The (fireworks) exhibitor had never even signed the permit," said **Keith M. Karr**, representing Ryll's family.

Karr said Ryll and 5,000 other people were seated as close as 660 feet from the show run by Columbus Fireworks Display of Marengo.

"These spectators were not at a safe distance," Karr said. "They should have been 840 feet away."

Karr said fire-prevention officials from Truro didn't know the size of the shells fired that Independence Day, "so how could they know the distance? There was no inspection."

Attorneys disagreed about whether Ohio's Recreational User Statute -- which protects municipalities when someone is injured in a public place while hunting, fishing, trapping, camping or swimming -- could be applied in this case.

In September 2000, the 10th District Court of Appeals ruled Reynoldsburg and Truro are immune from the liability lawsuit.

Alan Wayne Sheppard, an attorney representing Reynoldsburg, said the recreational statute protects municipalities when people get hurt at softball games.

The Supreme Court, however, was asked by Karr to consider whether Reynoldsburg is liable because it sponsored the fireworks and whether Truro is responsible because it conducted the fire inspection.

Timothy J. Ryan, an attorney for Truro, said the fire department officer had an obligation to determine the adequacy of the fireworks-launch site "and nothing more."

Also yesterday, the high court heard a Franklin County case in which a 30-year-old Oxford, Ohio, man was sentenced to 18 years in prison for soliciting sex from a 13-year-old girl via the Internet.

Attorneys for Mark William Maxwell argued that the majority of his jail time at Ross Correctional Institution -- for pandering obscenity -- was based on 12 Internet images that Maxwell deleted from his computer.

Maxwell's attorney, Clayton G. Napier of Hamilton, argued that his client's Internet conversations with teen-agers were consensual.

"I think the prosecutor overcharged the case. I think they thought they got Attila the Hun, and they actually got Huck Finn . . . There's absolutely no justification for this man to get 18 years."

But Franklin County Assistant Prosecutor Scott M. Forehand said Maxwell viewed child-pornographic images that were transmitted via American Online in Virginia and retrieved from Maxwell's computer by the FBI.

Justices Andrew Douglas and Evelyn Lundberg Stratton expressed concern about people being prosecuted after accidentally viewing a pornographic image.

"What if you opened an attachment without knowledge?" Douglas asked.

Forehand said that a casual, accidental observer would not be charged, saying the prosecution must prove criminal intent.

"The files were not deleted in this case," he said.

"That is categorically not true," Napier said, insisting Maxwell immediately deleted the pornographic images. Napier also disputed whether the images depicted nude children as the prosecution alleged.

Maxwell was sentenced in September 1999 on 15 sex-related charges, fined \$14,000 and labeled a sexual predator for life.

A jury found Maxwell guilty of one count of compelling prostitution in a Worthington case that launched a wider investigation.

A Franklin County teen who corresponded with Maxwell via instant messages and e-mail agreed to meet him at an ice-cream shop. She wore a wire to record their conversation as police listened and watched.

After viewing about a dozen images found on Maxwell's computer, jurors said he was guilty of eight counts of pandering obscenity involving minors.

Judge Deborah O'Neill sentenced Maxwell to two years in prison for each of those

convictions plus one year for compelling prostitution -- all to be served consecutively.

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