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Child porn case

ends in plea deal

By MARY ANN GREIER/Salem News staff writer

LISBON - A 47-count felony indictment for alleged child pornography possession became a single misdemeanor count of displaying matter harmful to juveniles in a plea agreement for David Simms.

The 52-year-old Wellsville resident pled guilty Tuesday afternoon to prosecutor's information for the first-degree misdemeanor charge, sending jurors home before their duties began in Columbiana County Common Pleas Court.

Jurors were already arriving when word of a resolution came down just before 1 p.m. Judge C. Ashley Pike still showed them the introductory video for jurors while attorneys finalized the deal.

County Assistant Prosecutor Tim McNicol said he'll recommend a fine of up to \$1,000 with no jail time at sentencing and dismiss the original indictment. The charge carries a minimum penalty of a fine or a maximum penalty of 180 days in the county jail and up to a \$1,000 fine.

A pre-sentence investigation was ordered, with sentencing set for 1 p.m. Sept. 24.

McNicol told the judge the state made the offer due to the current state of Ohio law, which places a heavy burden on the prosecution when it comes to proving an image involves a real child and not something created on a computer.

Investigators alleged that Simms possessed nude photographs of children and photographs of children performing sex acts. The indictment charged him with 41 counts of illegal use of a minor in nudity-oriented material or performance, a fifth-degree felony, and six counts of pandering sexually oriented matter involving a minor, a



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fourth-degree felony, which could have led to a lengthy prison stint if convicted.

The charge for the plea alleged that in October 2002, Simms displayed at his business establishment material harmful to juveniles and open to view by juveniles as part of the invited general public. Simms operated the Clip & Curl at 445 Main St. in Wellsville.

When asked for comment after the plea, Simms said, "I think justice was served."

He denied the allegations from the original indictment, saying he had nothing to do with it. But regarding his plea, he did say he and some male friends were sitting in the salon one day watching an adult film on the computer and a child could have walked inside. He said no child saw the screen.

"The truth has come out," he said, getting hugs from his wife, Joann.

His attorney, Ronald Gatts, said the element Simms pled to was the worse case the prosecution could have proven.

"I think the 47 counts was overkill. I think this is a good resolution," he said.

A separate third-degree felony charge of gross sexual imposition against Simms remains unresolved, with a status conference set for 10 a.m. Oct. 8 and a trial set for 8:30 a.m. Oct. 18 before Judge David Tobin.

The indictment issued in late May alleged that on or about the months of April 1983 and January 1984, the defendant had sexual contact with a girl who was 6 years old for the first incident and 7 years old for the second one. The victim would now be 28 years old.

Also still pending was a third-degree felony charge of tampering with evidence against his wife, Joann, 33, for allegedly trying to reformat their computers after investigators spoke with Simms but before they served a search warrant.

A status conference remains set for 9:30 a.m. Aug. 16, with a trial set for 9 a.m. Aug. 17 in Pike's courtroom.

Both the defense and the prosecution acknowledged that the deal Tuesday had no bearing on the other cases.

McNicol said the plea agreement had more to do with legal issues and nothing to do with the quality of work by investigators with the Sheriff's Office and the Bureau of Criminal Investigation and Identification.

"I'm not at all happy with this outcome," he said.

Both McNicol and Deputy Attorney General Scott Longo, who was appointed as a special prosecutor from the Ohio Attorney General's office to assist McNicol, said they were facing an uphill battle to prove their case due to recent court rulings and state law.

The issue hinged on their ability to prove beyond a reasonable doubt that the subjects depicted were real children.

"I certainly think a message has been sent," McNicol said, explaining, "People who delve into the possession of these types of images need to be very careful as to what they're doing."

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