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JUSTICES LIMIT EVIDENCE IN SEXUAL ASSAULT CASES OVERTURNED CONVICTION HAILED AS LANDMARK

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In a ruling that limits what prosecutors can say about the character of people charged with sex crimes based on what they keep in their homes, the state Supreme Court Monday overturned a 1994 Lexington County conviction.

The decision for the first time sets tight limits on what South Carolina prosecutors can use in sexual-assault cases. Prosecutors should not have shown the jury much of what police took from the bedroom of Larry Don Nelson's West Columbia home, the court said in a 4-1 decision.

Nelson, 48, had a membership card for the fan club of television character "Punky Brewster," photographs of young girls, and videotapes of the "Mr. Knozit" show and a just-say-no show on child molestation.

"The whole bedroom was like a playground for children," prosecutor Dayton Riddle said Monday in response to the ruling. "The whole setup was to lure a child into that room."

The justices said that's not good enough for the rules of evidence.

"It is obvious the real purpose, the sole purpose, of this evidence was . . . to prove the appellant was a sexual pervert, and, in particular to prove that his perversion was pedophilia," the court said in quoting a Kentucky decision in a similar case. "We find the evidence clearly inadmissible.

"We declare, unqualifiedly, that citizens . . . are not subject to criminal conviction based upon the contents of their bookcases unless and until there is evidence linking it to the crime charged," the opinion said, quoting from the Kentucky case.

In a dissenting opinion, Justice James Moore said the conviction should stand because Nelson admitted he is a child molester. He acknowledged fantasizing about young girls and said that almost everything in his room was for sexual purposes.

In addition, the defense failed to object to much of the damaging evidence, Moore observed.

Nelson was convicted in 1994 of four counts of criminal sexual conduct with a minor and four counts of lewd acts on a minor in connection with incidents in his home in 1991 and 1992.

Nelson, serving 140 years, had no record of sexual offenses before the March 1994 trial. The girl was 3 at the time.

Jack Swerling, the Columbia lawyer who handled Nelson's appeal, called Monday's decision a landmark.

"The far-reaching implication here is that what you have in your home is protected and should not be admissible in court if you're charged with a crime to show that you're a bad person or that you have a propensity to commit a crime," **Swerling** said.

Nelson has "limited mental capacity," and surrounded himself with childish things, **Swerling** said.

Prosecutors have to link belongings directly to a crime before showing it to a jury, he said.

For example, owning Soldier of Fortune magazine shouldn't be used to show that a bombing suspect is inclined toward violence, the defense lawyer said.

Riddle, who prosecuted Nelson, said that throwing out Nelson's statements might have a bigger impact on future cases. That's because more disputes arise from what defendants tell police than from seized evidence.

"I hope it's an aberration," Riddle said of the ruling. "Obviously, I disagree with what they did in this case.

"It's not like we put up evidence that was not from the crime scene or did not come from his own statements," Riddle said.

The deputy solicitor in the 11th Circuit said he plans to prosecute Nelson again.

The 18-page ruling overturns trial Judge Julius Baggett and the state Court of Appeals and entitles Nelson to a new trial.

About 20 states have exceptions to allow the kind of evidence the South Carolina court threw out in the Nelson case.

Prosecutors contend Monday's decision won't have wide-ranging effects. But they agree it is a landmark.

In a Richland County's molestation case against Chuck Sullivan, for example, police found child pornography on Sullivan's home computer. Sullivan is accused of molesting 18 boys over a 19-year period.

Solicitor Barney Giese said that differs from the Nelson case because having child pornography is a crime. Sullivan is charged with that offense. The items found in Nelson's bedroom were legal.

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