

226.81 KNOWINGLY DISSEMINATING A PHOTOGRAPHIC IMAGE OBTAINED BY SECRETLY PEEPING¹.

NOTE WELL: When a person is convicted under this statute the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of Chapter 14 would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

The defendant has been charged with knowingly disseminating a photographic image² obtained by secretly peeping.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant knowingly disseminated or allowed to be disseminated a photographic image.

Second, that the defendant knew or should have known the photographic image was obtained by [secretly peeping into a room³] [secretly creating a photographic image of another person underneath or through the clothing being worn by that person] [secretly using or installing in a room a device that can be used to create a photographic image]. [The term secretly peeping into a room means peeping into a room occupied by another person who has a legitimate expectation of privacy at that time.] [Secretly creating a photographic image of another person underneath or through the clothing being worn by that person is the secret use of a device to create a photographic image of another person underneath or through the clothing being worn by that person without that person's consent and for the purpose of viewing the body of, or the undergarments worn by, that person.] [Secretly using or installing in a room a device that can be used to create a photographic image is secretly or surreptitiously installing in a room

any such device with the intent to capture the image of another person without that person's consent and acting for the purpose of arousing or gratifying the sexual desire of any person.]

And Third, that the defendant disseminated the photo- graphic image without the consent of the person in the photographic image.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly disseminated or allowed to be disseminated a photographic image without the co sent of the person in the photographic image, and that the defendant knew or should have known that the photographic image was obtained by [secretly peeping into a room] [secretly creating a photographic image of another person underneath or through the clothing being worn by that other person] [secretly installing or using a device that can be used to create a photographic image in a room], it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

NOTE WELL: This statute shall not apply to law enforcement officers while discharging or attempting to discharge their official duties, or personnel of the Department of Correction or of a local confinement facility for security purposes or during an investigation of alleged misconduct by a person in the custody of the Department or the local confinement facility. Furthermore, this section does not affect the legal activities of those who are licensed pursuant to G.S. Chapter 74C, Private Protective Services, or G.S. Chapter 74D, Alarm Services, who are legally engaged in the discharge of their official duties within their respective professions, and who are not engaging in activities for an improper purpose as described in this section.

1. A second or subsequent felony conviction under this section shall be punished as though convicted of an offense one class higher.

2. The term "photographic image" means any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual.

3. The term "room" shall include, but is not limited to, a bedroom, a rest room, a bathroom, a shower, and a dressing room.