

238.21C FIRST DEGREE SEXUAL EXPLOITATION OF A MINOR BY
PHOTOGRAPHING, ETC. FELONY.

NOTE WELL: For offenses occurring on or after December 1, 1995 this offense is a Class D felony.

G.S. 14-190.16(c) provides that a mistake of age is not a defense to prosecution.

The defendant has been charged with first degree sexual exploitation of a minor.¹

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

First, that the defendant [recorded] [photographed] [filmed] [developed] (or) [duplicated] material² for [sale] (or) [pecuniary gain].

Second, that the material contained a visual representation depicting a person engaged in sexual activity.³ (*Define sexual activity, i.e., masturbation*) is sexual activity.

Third, and that person was a minor.

And Fourth, that the defendant knew the material's [character] [content].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [recorded] [photographed] [filmed] [developed] (or) [duplicated] for [sale] (or) [pecuniary gain] material that contained a visual representation depicting a minor engaged in sexual activity and that the defendant knew the [character] (or) [content] of the material, 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: G.S. 14-190.16(b) states that "[i]n a prosecution under this section, the trier of fact may infer that a participant in

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sexual activity whom material through its title, text, visual representations, or otherwise represents or depicts as a minor is a minor.”

1. G.S. 14-190.13(3) defines minor as “an individual who is less than eighteen (18) years old and is not married or judicially emancipated.”

2. G.S. 14-190.13(2) defines material as “pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.”

3. G.S. 14-190.13(5) defines sexual activity.