

N.C.P.I.—Crim. 238.25

[PRODUCING] [DISTRIBUTING] [RECEIVING] [POSSESSING WITH INTENT TO DISTRIBUTE] OBSCENE VISUAL REPRESENTATION OF SEXUAL EXPLOITATION OF A MINOR. FELONY.

GENERAL CRIMINAL VOLUME

JANUARY 2025

N.C. Gen. Stat. § 14-190.17C(a)

238.25. [PRODUCING] [DISTRIBUTING] [RECEIVING] [POSSESSING WITH INTENT TO DISTRIBUTE] OBSCENE VISUAL REPRESENTATION OF SEXUAL EXPLOITATION OF A MINOR. FELONY.

The defendant has been charged with [producing] [distributing] [receiving] [possessing with intent to distribute] obscene visual representation of sexual exploitation of a minor.

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

First, that the defendant knowingly [produced] [distributed] [received] [possessed with intent¹ to distribute] material² that depicted a minor³ engaged in sexual activity.⁴

And Second, that the material was obscene.⁵

NOTE WELL: N.C. Gen. Stat. § 14-190.17C(c) provides that the minor depicted need not actually exist.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly [produced] [distributed] [received] [possessed with intent to distribute] material that depicted a minor engaged in sexual activity, and that the material was obscene, 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.

1. "Intent" is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom. See N.C.P.I.—Crim. 120.10

2. N.C. Gen. Stat. § 14-190.13(2) defines "material" as "pictures, drawings, video recordings, films or other visual or physical depictions or representations, including digital or computer-generated visual depictions or representations created, adapted, or modified by

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technological means, such as algorithms or artificial intelligence, but not material consisting entirely of written words.”

3. N.C. Gen. Stat. § 14-190.13(3) defines “minor” as “an individual who is less than eighteen (18) years old and is not married or judicially emancipated.”

4. N.C. Gen. Stat. § 14-190.13(5) defines sexual activity.

5. N.C. Gen. Stat. § 14-190.13(3a) provides that “[m]aterial is obscene if it meets all of the following criteria:

- a. The material depicts or describes in a patently offensive way sexual activity.
- b. The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex.
- c. The material lacks serious literary, artistic, political, or scientific value.
- d. The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.