

OPENING COIN- OR CURRENCY-OPERATED MACHINES BY UNAUTHORIZED USE OF [A KEY] [AN INSTRUMENT]. FELONY. G.S. 14-56.1.

NOTE WELL: Use this instruction only if the defendant denies a previous conviction under G.S. 14-56.1 or remains silent. If he admits the previous conviction, use N.C.P.I.--Crim. 214.50. (And see G.S. 15A-928.)

The defendant has been charged with feloniously opening a [coin] [currency] -operated machine<sup>1</sup> by the unauthorized use of [a key] [an instrument].

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

First, that the defendant opened a [coin] [currency] -operated machine. (*Describe machine*) is a [coin] [currency] -operated machine.

Second, that the defendant did this by use of a [key] [*describe instrument*].

Third, that the defendant was not authorized to use this [key] [*describe instrument*] in such manner.

Fourth, that at the time the defendant opened the machine, he intended to steal money or property from it; that is, he intended to deprive the rightful owner permanently of possession of the money or property.

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<sup>1</sup>G.S. 14-56.1 defines "coin- or currency-operated machine" as any coin- or currency-operated vending machine, pay telephone, telephone coin or currency receptacle, or other coin- or currency-activated machine or device.

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And Fifth, that the defendant has previously been convicted of [breaking into] [forcibly opening] [opening by unauthorized use of a key or other instrument] a [coin] [currency] -operated machine.

If you find from that evidence beyond a reasonable doubt that on or about the alleged date, the defendant opened a [coin] [currency] -operated machine, and that he did so by use of a(n) [key] [instrument], and that the defendant was not authorized to use this [key] [instrument] in such manner, and that at the time the defendant opened the machine he intended to steal money or property contained therein, and that the defendant has previously been convicted of [breaking into] [forcibly opening] [opening by unauthorized use of a key or other instrument] a [coin] [currency] -operated machine, it would be your duty to return a verdict of guilty of feloniously opening a [coin] [currency] -operated machine by the unauthorized use of a(n) [key] [instrument]. If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of feloniously opening a [coin] [currency] -operated machine by the unauthorized use of a(n) [key] [instrument] but you must determine whether the defendant is guilty of misdemeanor opening a [coin] [currency] -operated machine by the unauthorized use of a(n) [key] [instrument]. The misdemeanor differs from the felony only in that the State need not prove that the defendant had been previously convicted of [breaking into] [forcibly

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opening] [opening by unauthorized use of a key or other instrument] a [coin] [currency] -operated machine.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant opened a [coin] [currency] -operated machine without authority by use of a(n) [key] [instrument] intending at that time to steal money or property contained therein, it would be your duty to return a verdict of guilty of misdemeanor opening a [coin] [currency] -operated machine by the unauthorized use of a(n) [key] [instrument]. 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.

