

UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE.  
G.S. § 14-440.1. FELONY, MISDEMEANOR.<sup>1</sup>

*NOTE WELL: If the defendant admits to a prior conviction for unlawful operation of an audiovisual recording device, that element of the offense is established and no evidence in support thereof may be adduced by the State. In such case, a transcript of plea is required for the admission of these convictions. If the defendant denies the prior conviction or remains silent, the State must prove the fifth element of the offense below. (See G.S. 15A-928). State v. Burch, 585 S.E.2d 461 (N.C. App. 2003).*

The defendant has been charged with felonious unlawful operation of an audiovisual recording device.

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

First, that the defendant [operated] [attempted to operate] an audiovisual recording device. An audiovisual recording device is any device, capable of recording, copying, or transmitting a motion picture, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

Second, that the defendant [operated] [attempted to operate] the audiovisual recording device in a motion picture theater. A motion picture theater means a movie

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<sup>1</sup>G.S. 14-440.1(c)(2) provides that, if a person is convicted of any violation of this section, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works, or any parts thereof, and all implements, devices, and equipment used or intended to be used in connection with the offense.

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theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

Third, that the defendant [operated] [attempted to operate] the audiovisual recording device to [transmit] [record] [make a copy of] the motion picture, or any part thereof.

Fourth, that the defendant did so without the written consent of the motion picture theater owner.<sup>2</sup>

And Fifth, that on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the [misdemeanor] [felony] of unlawful operation of an audiovisual device, that was committed on (name date) in violation of the laws of the State of North Carolina.<sup>3</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [operated] [attempted to operate] an audiovisual recording device in a motion picture theater to [transmit] [record]

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<sup>2</sup>G.S. 14-440.1(e) provides that this section does not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence gathering employee or agent of a local, State, or federal government from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

<sup>3</sup>If this offense is alleged to be the third or subsequent offense under this section, then this instruction can be edited accordingly.

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[make a copy of] a motion picture without the theater owner's written consent, and that on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the [misdemeanor] [felony] of unlawful operation of an audiovisual device, that was committed on (name date) in violation of the laws of the State of North Carolina, it would be your duty to return a verdict of guilty of felonious unlawful operation of an audiovisual recording device. If you do not so find or if you have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of felonious unlawful operation of an audiovisual device but would consider whether the defendant is guilty of non-felonious unlawful operation of an audiovisual device. Non-felonious unlawful operation of an audiovisual recording device differs from the felony in that the defendant need not have previously [been convicted of] [pled guilty to] unlawful operation of an audiovisual recording device.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [operated] [attempted to operate] an audiovisual device in a motion picture theater to [transmit] [record] [make a copy of] a motion picture without the theater owner's

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written consent, it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.