

FELONIOUSLY ENGAGING IN A RIOT WHERE THE DEFENDANT HAS ACTUALLY PARTICIPATED IN THE VIOLENCE--DANGEROUS WEAPON OR SUBSTANCE. FELONY. MISDEMEANOR. G.S. 14-288.2(c)(2).

The defendant has been charged with feloniously engaging in a riot.

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

First, that there was a riot.

A *riot* is a public disturbance, involving an assemblage of three or more persons which, by violent and disorderly conduct or the imminent threat of violent and disorderly conduct,

[results in injury or damage to persons or property]

(or)

[creates a clear and present danger of injury or damage to persons or property].

A *public disturbance* is any annoying, disturbing or alarming act or conduct, exceeding the bounds of social toleration normal for the time and place in question. The disturbance must [occur in] [affect or be likely to affect persons in] a [public place]<sup>1</sup> [place to which [the public] [a substantial group] has access]. ((*Name place, i.e., the yard of Prospect Methodist Church*) is a [public place] [place to which [the public] [a substantial group] has access.]) ((*Name group, e.g., the Members of Prospect Church*) are a substantial group.))

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<sup>1</sup>The places covered by this definition shall include, but are not limited to, highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood." G.S. § 14-228.1(8).

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*Violent and disorderly conduct consists of:*

<sup>a</sup>[fighting or other violent conduct.]

<sup>b</sup>[(an) [utterance] [gesture] [display] [abusive language] which was intended by the person using it to provoke violent retaliation and thereby cause a breach of the peace, and which was likely to do so.]

<sup>c</sup>[(Describe any other form of disorderly conduct relied upon by the State. See G.S. § 14-288.4(a)(3) through (6)).]

Second, the State must prove that the defendant willfully engaged in the riot. Willfully means intentionally and without justification or excuse.<sup>2</sup>

And Third, the State must prove that the defendant had a dangerous weapon or substance in his possession. (*Name weapon or substance*) is a dangerous [weapon] [substance].<sup>3</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant had a (*name weapon or substance*) in his possession, and he willfully engaged in a riot at (*describe place*), it would be your duty to return a verdict of

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<sup>2</sup>Evidence that a person has disobeyed a lawful command to leave the scene of a riot after being lawfully ordered to do so is sufficient to let the case go to the jury on both the question of participation and willfulness. See G.S. 14-288.5(c).

<sup>3</sup>In practically all cases the weapon or substance will be dangerous as a matter of law in view of the fact that it need not be used. Theoretically, a defendant might use a non-deadly weapon per se as a dangerous weapon. In that event, the instruction should be altered accordingly. See G.S. 14-288.1(2) for a definition of "dangerous weapon or substance."

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guilty of feloniously engaging in a riot. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of feloniously engaging in a riot.<sup>4</sup>

If you do not find the defendant guilty of feloniously engaging in a riot, you must determine whether he is guilty of the misdemeanor of engaging in a riot, which differs from feloniously engaging in a riot in that it is not necessary for the State to prove beyond a reasonable doubt that the defendant had a (*name weapon or substance*) in his possession.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully engaged in a riot at (*describe place*), it would be your duty to return a verdict of guilty of the misdemeanor of engaging in a riot. 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.

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<sup>4</sup>If a lesser included instruction is not to be given, the last clause should be ". . . it would be your duty to return a verdict of not guilty of feloniously engaging in a riot."

