

FELONIOUS INCITING TO RIOT¹--DAMAGE IN EXCESS OF \$1,500 OR SERIOUS BODILY INJURY (WITH MISDEMEANOR INCITING AS A LESSER INCLUDED OFFENSE). FELONY. MISDEMEANOR. G.S. § 14-288.2(e).

The defendant has been charged with felonious inciting to riot.

For you to find the defendant guilty of felonious inciting to riot, the State must prove four things beyond a reasonable doubt.

First, that the defendant willfully incited or urged another person to engage in 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.

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]² [place to which [the public] [a substantial group] has access]. (*Name place, i.e., the yard of Prospect Methodist Church*) is a [public place]

¹*S. v. Brooks*, 287 N.C. 392 (1975) and *Fuller v. Scott*, 328 F. Supp. 842 (M.D.N.C. 1971) are leading cases on inciting to riot and should be consulted by the judge before trying such a case. See also *S. v. Riddle*, 45 N.C. App. 34 (1980).

²"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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(Continued.)

[place to which [the public] [a substantial group] has access]. ((Name group, e.g., The members of the Prospect Church) are a substantial group.))

Violent and disorderly conduct consists of:

^a[fighting or other violent conduct.]

^b[(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.]

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

One person willfully incites or urges another person to engage in a riot when the first person specifically intends to cause the other to engage in the riot and carries out this intent by using words or gestures which are reasonably likely to cause the other to do so immediately.³

Second, the State must prove beyond a reasonable doubt that a riot occurred.

Third, that the defendant's inciting or urging was a contributing cause of the riot.

³If there is a serious issue as to the defendant's intent, give N.C.P.I.--Crim. 120.00 (Definition of Intent).

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And Fourth, that there was [property damage in excess of fifteen hundred dollars] (or) [serious bodily injury] in the riot. (Serious bodily injury is such physical injury as causes great pain and suffering.⁴ ((Describe injury) is a serious bodily injury.)⁵)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant willfully incited another person to engage in a riot, that a riot occurred and that the defendant's inciting was a contributing cause of the riot, and that this resulted in [property damage in excess of fifteen hundred dollars] (or) [serious bodily injury], it would be your duty to return a verdict of guilty of felonious inciting to riot. 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 felonious inciting to riot, but you must determine whether the defendant is guilty of the misdemeanor of inciting to riot, which differs from felonious inciting to riot only in that the State need not prove beyond a reasonable doubt that there was [property

⁴S. v. Jones, 258 N.C. 89 (1962); S. v. Ferguson, 261 N.C. 558 (1964).

⁵"Where . . . the evidence with respect to the injuries is not contradicted and the injuries could not conceivably be considered less than serious, . . . the court may instruct the jury that if they believe the evidence as to injuries, they will find that there was serious injury." S. v. Springs, 33 N.C. App. 61 (1977).

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damage in excess of fifteen hundred dollars] (or) [serious bodily injury] in the riot.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully incited another person to engage in a riot and that, as a result of this incitement, a riot occurred, it would be your duty to return a verdict of guilty of the misdemeanor of inciting to 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.