

FELONIOUSLY ENGAGING IN A RIOT WHERE THE DEFENDANT HAS ACTUALLY PARTICIPATED IN THE VIOLENCE--MORE THAN \$1500 PROPERTY DAMAGE OR SERIOUS INJURY. FELONY. MISDEMEANOR. G.S. 14-288.2(c)(1).

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]¹ [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.))

¹"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.)

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)).]

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

And Third, the State must prove that [somebody was seriously injured]³ [that the property damage was more than \$1500.00].

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*) and that as a result thereof [somebody was seriously injured] [more than \$1500.00 of property damage

²Evidence 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).

³Serious bodily injury may be defined as "such physical injury as causes great pain and suffering." See State v. Jones, 258 N.C. 89 (1962), State v. Ferguson, 261 N.C. 558 (1964).

If there is evidence as to injuries which could not conceivably be considered anything but serious, the trial judge may instruct the jury as follows: "(Describe injury) would be a serious injury." State v. Davis, 33 N.C. App. 262 (1977); State v. Springs, 33 N.C. App. 61 (1977).

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occurred], it would be your duty to return a verdict of guilty of feloniously engaging in a riot. If you do not so find or if you 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.⁴

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 [more than \$1500.00 of property damage occurred] [somebody was seriously injured].

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.

⁴If 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.

