

208.43 SIMPLE AFFRAY. MISDEMEANOR.

The defendant is charged with simple affray.¹

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

First, that the defendant engaged in a fight² with at least one other person.

Second, that the fight was conducted in a public place. (*Name place*) is a public place.³

And Third, that the fight caused terror to other persons present at the scene of the fight.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant engaged in a fight with at least one other person in a public place, which caused terror to other persons present at the scene of the fight, it would be your duty to return a verdict of guilty. If you do not so find, or have reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1 See *In re May*, 357 N.C. 423, 584 S.E.2d 271 (2003).

2 With regard to the first element, fighting is the use of physical force or violence or any threat to immediately use such force or violence.

3 If there is conflicting evidence regarding whether the place is a public place, then you may delete this sentence and instead, instruct the jury on the following definition: "A public place, as used within definition of a simple affray, is a place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public." *In re May*, 357 N.C. 423, 584 S.E.2d 271 (2003).