

N.C.P.I.—Crim. 236A.10

FELONIOUSLY ENGAGING IN A RIOT WHERE THE DEFENDANT HAS ACTUALLY PARTICIPATED IN THE VIOLENCE—MORE THAN \$2,500 PROPERTY DAMAGE OR SERIOUS BODILY INJURY. FELONY. MISDEMEANOR.

GENERAL CRIMINAL VOLUME  
REPLACEMENT SEPTEMBER 2023  
N.C. Gen. Stat. § 14-288.2(c1)  
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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*<sup>1</sup> 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>2</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.))

Violent and disorderly conduct consists of:

a) [fighting or other violent conduct.]

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- 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 N.C. Gen. Stat. § 14-288.4(a)(3) through (6)).]

Second, that the defendant willfully engaged<sup>3</sup> in the riot. Willfully means intentionally and without justification or excuse.<sup>4</sup>

And Third, that in the course of the riot the defendant caused [serious bodily injury]<sup>5</sup> [property damage in excess of \$2,500.00].

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 in the course of the riot the defendant caused [serious bodily injury] [property damage in excess of \$2500.00], 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 but must determine whether the defendant is guilty of misdemeanor 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 caused [serious bodily injury] [property damage in excess of \$2,500.00].<sup>6</sup>

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 misdemeanor 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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1. N.C. Gen. Stat. § 14-288.1(8).

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." N.C. Gen. Stat. § 14-288.1(8).

3. Mere presence alone, without an overt act, is not sufficient to sustain a conviction. See N.C. Gen. Stat. § 14-288.2(g).

4. 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 N.C. Gen. Stat. § 14-288.5(c).

5. "Serious bodily injury" is bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. N.C. Gen. Stat. § 14-32.4(a).

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 bodily injury." See *State v. Hedgepeth*, 330 N.C. 38, 54, 409 S.E.2d 309, 318 (1991) (approving a peremptory instruction where evidence supported a finding of serious injury).

6. 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."