

236A.20 INCITING TO RIOT¹. MISDEMEANOR.

The defendant has been charged with inciting to riot.

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

First, that a riot occurred.

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*² 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]³ [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.]
- 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)).]

(A clear and present danger of a riot exists only when each of the elements of a riot just described is about to occur and will occur immediately if there is no timely intervention.)

Second, that the defendant willfully incited⁴ another person to engage in a riot.

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.⁵

And Third, that the riot resulted or was directly and imminently likely to be produced from the defendant's incitement.

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 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.

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. N.C. Gen. Stat. § 14-288.1(8).

3. "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).

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

5. If a definition of intent is needed, see N.C.P.I.—Crim. 120.10 (Definition of Intent).