

236A.21 FELONIOUS INCITING TO RIOT¹—CAUSING DEATH. FELONY.

The defendant has been charged with felonious inciting to riot causing a death.

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

First, that the defendant willfully incited² 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]

(or)

[creates a clear and present danger of injury or damage to persons or property].

A public disturbance³ 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]⁴ [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 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 N.C. Gen. Stat. § 14-288.4 (a)(3) through (6).*]

One person willfully incites 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 Second, that the defendant's incitement was a contributing cause of a riot in which there was a death.

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 the defendant's incitement was a contributing cause of a riot in which there was a death, 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 both 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. Mere presence alone, without an overt act, is not sufficient to sustain a conviction. N.C. Gen. Stat. § 14-288.2(g).

3. N.C. Gen. Stat. § 14-288.1(8).

4. "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).

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