

N.C.P.I.—Crim. 236A.25  
FELONIOUS INCITING TO RIOT—DAMAGE IN EXCESS OF \$2,500 OR  
SERIOUS BODILY INJURY (WITH MISDEMEANOR INCITING AS A LESSER  
INCLUDED OFFENSE). FELONY. MISDEMEANOR.  
GENERAL CRIMINAL VOLUME  
REPLACEMENT OCTOBER 2023  
N.C. Gen. Stat. § 14-288.2(e)  
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236A.25 FELONIOUS INCITING TO RIOT<sup>1</sup>—DAMAGE IN EXCESS OF \$2,500  
OR SERIOUS BODILY INJURY (WITH MISDEMEANOR INCITING AS A LESSER  
INCLUDED OFFENSE). FELONY. MISDEMEANOR.

The defendant has been charged with felonious inciting to riot.

For you to find the defendant guilty of felonious inciting to riot, the State must prove four 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>2</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>3</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 the 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 incited<sup>4</sup> another person to engage in a riot.

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.<sup>5</sup>

Third, that the defendant's incitement was a contributing cause of the riot.

And Fourth, that there was [property damage in excess of \$2,500.00] (or) [serious bodily injury<sup>6</sup>] in the riot. (*(Describe injury)* is a serious bodily injury.)<sup>7</sup>)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date a riot occurred, the defendant willfully incited another person to engage in the riot, the defendant's inciting was a contributing cause of the riot, and that there was [property damage in excess of \$2,500.00] (or) [serious bodily injury] in the riot, 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 more of these things, you would not return a verdict of guilty of felonious inciting to riot, but you must determine whether the defendant is guilty of misdemeanor inciting to riot, which differs from felonious

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inciting to riot only in that the State need not prove beyond a reasonable  
doubt that there was [property damage in excess of \$2,500.00] (or) [serious  
bodily injury] in the riot.

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 misdemeanor 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.

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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).

4. Mere presence alone, without an overt act, is not sufficient to sustain a conviction. 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).

6. "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).

7. 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).