

800.56 ASSAULT AND BATTERY - DEFENSE OF PROPERTY.

The (*state number*) issue reads:

"Was the defendant's [assault] [battery] on the plaintiff a reasonable defense of property?"

You are to answer this issue only if you have answered the (*state number*) issue "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the defendant.¹ This means that the defendant must prove, by the greater weight of the evidence, four things:²

First, that the defendant was in possession of the (*name property*) as [its owner] [an agent for its owner] [an employee of its owner].

Second, that the defendant reasonably believed that the plaintiff was about to [injure] [destroy] [unlawfully take] the (*name property*).

Third, that to prevent the plaintiff from [injuring] [destroying] [unlawfully taking] the (*name property*), the defendant reasonably believed *he* had to use force.

Fourth, that the defendant used no more force against the plaintiff than was reasonably necessary under the circumstances to prevent [injury to] [destruction of] [the unlawful taking of] the (*name property*).³

Finally, as to this issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the defendant's [assault] [battery] on the plaintiff was a reasonable defense of property, then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

1. In criminal cases, the burden of proof is on the State to prove the non-existence of facts tending to show self-defense. See N.C.P.I.-Crim. 206.30. Otherwise, criminal cases may be used to determine a self-defense justification in the civil action. *Young v. Warren*, 95 N.C. App. 585, 588, 383 S.E.2d 381, 383 (1989); *Harris v. Hodges*, 57 N.C. App. 360, 361, 291 S.E.2d 346, 347, *disc. rev. denied*, 306 N.C. 384, 294 S.E.2d 208 (1982).

2. *State v. Lee*, 258 N.C. 44, 46-47, 127 S.E.2d 774, 776-77 (1962).

3. *State v. McCombs*, 297 N.C. 151, 157, 253 S.E.2d 906, 911 (1979); *Lee*, 258 N.C. at 46-47, 127 S.E.2d at 776. Unless such force was used or threatened as would create a reasonable apprehension of death or great bodily harm, the defendant's use of deadly force would be excessive (*i.e.*, unreasonable) as a matter of law. *State v. Clay*, 297 N.C. 555, 563, 256 S.E.2d 176, 182 (1979), *overruled on other grounds*, *State v. Davis*, 305 N.C. 400, 415, 290 S.E.2d 574, 583 (1982).