

802.01 FALSE IMPRISONMENT - MERCHANT'S DEFENSES.

*NOTE WELL: This instruction is designed for the situation where a merchant detains someone for shoplifting. See N.C. Gen. Stat. § 14-72.1. The defense would also apply in an appropriate case to a suit for malicious prosecution, false arrest, or assault.<sup>1</sup>*

The first issue reads:

"Did the defendant intentionally detain the plaintiff against *his* will?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant intentionally<sup>2</sup> detained the plaintiff against *his* will.<sup>3</sup>

A person is detained against *his* will if *he* is deprived of *his* liberty; that is, compelled to remain where *he* does not wish to remain, or compelled to go where *he* does not wish to go. Detention can occur through the use of actual force, bodily contact, confinement or physical restraint. Detention can also occur when threatening words or conduct cause a person to have a reasonable apprehension that force will be used against *him* if *he* does not submit.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant intentionally detained the plaintiff against *his* will, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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 defendant.

If you answer the first issue "No," that would be the end of the case, and you would return to the courtroom to announce your verdict.

However, if you answer the first issue

“Yes”, then you would consider the second issue.

The second issue reads: “Was the detention by the defendant lawful?”

On this issue the burden of proof is on the defendant.<sup>4</sup> This means that the defendant must prove, by the greater weight of the evidence, that the detention was lawful. In order for the detention to be lawful the defendant must prove four things by the greater weight of the evidence:

First, that the defendant is [a merchant] [an agent or employee of a merchant] [a peace officer].

Second, that the detention took place upon the premises of the store or in reasonable proximity thereto.

Third, that the detention was done in a reasonable manner for a reasonable length of time.

And Fourth, that at the time of the detention, the defendant had probable cause<sup>5</sup> to believe that the plaintiff, while still upon the premises of the store, had concealed goods or merchandise of the store that had not been purchased.

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 detention was lawful, 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.

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1. *Redding v. Shelton's Harley Davidson, Inc.*, 139 N.C. App. 816, 534 S.E.2d 656 (2000); N.C. Gen. Stat. § 14-72.1.

2. For an instruction on intent, see N.C.P.I.-Civil 101.46.

3. *Rogers v. T.J.X. Companies, Inc.*, 101 N.C. App. 99, 104, 398 S.E.2d 610, 613 (1990), *review denied*, 328 N.C. 332, 402 S.E.2d 838, *rev'd in part*, 329 N.C. 226, 404 S.E.2d 664 (1991); *Black v. Clark's Greensboro, Inc.*, 263 N.C. 226, 228, 139 S.E.2d 199, 201 (1964); *Hales v. McCrory-McLellan Corp.*, 260 N.C. 568, 570, 133 S.E.2d 225, 227 (1963).

4. See *Redding v. Shelton's Harley Davidson, Inc.*, 139 N.C. App. 816, 534 S.E.2d 656 (2000).

5. Probable cause exists if the facts and circumstances known to the defendant warrant a prudent man in believing that the plaintiff had committed the acts in question. See *State v. Harris*, 9 N.C. App. 649, 651, 177 S.E.2d 445, 447 (1970); *Henry v. United States*, 361 U.S. 98 (1959).