

210.15 FALSE IMPRISONMENT. MISDEMEANOR.¹

The defendant has been charged with false imprisonment, which is the unlawful detention of a human being against his will.

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

First, that the defendant unlawfully² [restrained] [detained] a person.

And Second, that such restraint was against that person's will, that is, that the person did not consent to such [restraint] [detention].³

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully [restrained] [detained] the person and that person did not consent to such [restraint] [detention], it would be your duty to return a verdict of guilty. 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.

NOTE WELL: If the defendant contends that he acted lawfully, give appropriate instructions after the second element and in the mandate. For example, if the defendant contends that he was a merchant lawfully detaining a suspected shoplifter, give the following instruction after the second element:

(If the defendant⁴ at the time of the detention, had probable cause that is reasonable grounds⁵ to believe that the person, while still on the premises, had willfully concealed merchandise of the merchant not theretofore purchased by that person, and if the defendant detained that person in a reasonable manner and for a reasonable length of time, the defendant's detention of that person would be lawful and the defendant would not be guilty. If, however, the defendant did not have probable

cause, or if the detention was in an unreasonable manner or for an unreasonable length of time, the defendant's detention of that person would be unlawful.⁶ The State has the burden of proving beyond a reasonable doubt that the defendant acted unlawfully.

In addition, the following mandate should be given:

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [restrained] [detained] the person, and that the defendant did so unlawfully [because he did not have probable cause to believe that person had, while still on the premises of the business willfully concealed the merchandise of the business, not theretofore purchased by that person] [because the defendant detained the person [in an unreasonable manner] [for an unreasonable length of time]] and that the person did not consent to such [restraint] [detention], it would be your duty to return a verdict of guilty. 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. False imprisonment is a common law misdemeanor. This instruction is based on the definition of this crime set forth in *State v. Inland*, 278 N.C. 42, 51 (1971).

2. See "NOTE WELL".

3. In a proper case, *e.g.*, one involving a minor, it may be necessary for the trial judge to instruct as to a definition of consent.

4. N.C. Gen. Stat. § 14-72.1(c) applies to merchants, their employees or law enforcement officers.

5. "Whether probable cause exists depends upon 'whether at that moment the facts and circumstances within their knowledge or of which they have reasonable trustworthy information were sufficient to warrant a prudent person in believing that the [suspect] had committed or was committing an offense.' *Beck v. Ohio*, 379 U.S. 89 . . . (1964)." *S. v. Streeter*, 283 N.C. 203, 207 (1973).

6. See N.C. Gen. Stat. § 14-72.1(c).

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