

308.41 DETENTION OF OFFENDERS BY PRIVATE PERSONS.

If the defendant lawfully acted to detain the victim,¹ the defendant's actions are excused and the defendant is not guilty. The State has the burden of proving from the evidence beyond a reasonable doubt that the defendant did not lawfully act to detain the victim.

The defendant lawfully acted to detain the victim if the defendant had probable cause to believe that the victim had committed in the defendant's presence [a felony] [a breach of the peace] [a crime involving physical injury to another person] [a crime involving [theft] (or) [destruction] of property]. The defendant's action to detain the victim must have been reasonable considering the offenses involved and the circumstances of the detention.²

(The detention may not have lasted longer than the time required to [determine that no offense had been committed] [surrender the victim to a law-enforcement officer. And the defendant must have immediately notified a law-enforcement officer]).³

NOTE WELL: Add to the final mandate:

Although you are satisfied beyond a reasonable doubt that the defendant committed (*name offense*) you may return a verdict of guilty only if the State has satisfied you beyond a reasonable doubt that the defendant did not lawfully act to detain the victim, that is, that the defendant did not have probable cause to believe that the victim had committed in the defendant's presence [a felony] [a breach of the peace] [a crime involving physical injury to another person] [a crime involving [theft] [destruction] of property] or that the defendant acted unreasonably considering the offense involved and the circumstances of the detention, (or that the detention lasted longer than the time required

to [determine that no offense had been committed] [surrender the victim to a law-enforcement officer, or that the defendant failed to immediately notify a law-enforcement officer]). If you do not so find or have a reasonable doubt, then the defendant would be excused and it would be your duty to return a verdict of not guilty.

1. In *State v. Wall*, 304 N.C. 609 (1982) the person the defendant attempted to detain was shot and killed. See also *State v. Atari-Kachuei*, 68 N.C. App. 209 (1984) (defendant shot and killed the person *he* was attempting to detain).

2. The general rule is that a person may not use deadly force to detain a person unless it is necessary to prevent escape and there is probable cause to believe that the suspect poses a significant threat of death or serious physical injury to others *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694 (1985). See also *State v. Wall, supra* at 616 (theft of two six-packs of beer).

3. This paragraph is optional, depending on the facts of the case there may be no question as to the length of the detention. See *State v. Wall, supra* and *State v. Atari-Kachver, supra*.