

103.40 OWNERSHIP OF VEHICLE AS *PRIMA FACIE* EVIDENCE OF AGENCY.

The motor vehicle law provides that proof of ownership of a motor vehicle at the time of an accident or collision is sufficient evidence that the vehicle was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which the injury or cause of action arose.¹ In other words, proof of ownership of the vehicle is sufficient evidence from which you could find, but are not compelled to find, that the driver was an agent of the owner.

The owner may offer evidence tending to show that, in fact, no agency existed. Whether or not *the owner* offers such evidence, *the owner* does not have the burden of proving the absence of agency.²

1. *Biggs v. Brooks*, 285 N.C. App. 64, 68, 877 S.E.2d 406, 409 (2022) (“By law, proof of ownership of a motor vehicle at the time of a collision is *prima facie* evidence that the motor vehicle was being operated with the authority, consent, and knowledge of the owner and ‘being operated by and under the control of a person for whose conduct the owner was legally responsible.’”).

2. When a plaintiff relies upon proof of ownership through N.C.G.S. § 20-71.1(a), “the defendant may offer positive, contradicting evidence which, if believed, would establish the absence of an agency relationship. This contradictory evidence entitles the defendant to a peremptory instruction that if the jury does believe the contrary evidence, it must find for defendant on the agency issue. In other words, when the defendant presents evidence contradicting this statutory agency principle, the statutory presumption is not weighed against defendant’s evidence by the trier of facts. Instead, the plaintiff must present affirmative evidence supporting the agency theory.” *Biggs v. Brooks*, 285 N.C. App. 64, 69, 877 S.E.2d 406, 410 (2022) (internal quotation marks and citations omitted). For an example of a peremptory instruction, see N.C.P.I. 101.65—Peremptory Instruction.