

103.41 IDENTIFICATION OF DRIVER.

NOTE WELL: Use this instruction only if there is an issue as to who was driving an automobile involved in an accident. Such a situation could exist if the driver and all passengers are killed.

This issue reads:

"Was (*name alleged operator*) the driver of the vehicle at the time of the accident in question?"

The burden of proof on this issue is on the plaintiff (*name plaintiff*).

This means the plaintiff must prove by the greater weight of the evidence that (*name alleged operator*) was driving the vehicle at the time of the accident.

The identity of the operator may be established by direct evidence, by circumstantial evidence or by a combination of direct and circumstantial evidence.¹ Thus, you may consider such things as who was seen driving prior to the accident, the position of the bodies after the accident and the extent of injuries received. You may also consider the ages of all occupants, who had a driver's license, the type of seating in the vehicle, and all other relevant circumstances in the case in determining who was operating the vehicle.²

[There is no presumption that the owner of the vehicle who was in the vehicle at the time of the accident was the operator. However, ownership is also one factor you may consider.]

Finally, as to this issue on which the plaintiff has the burden of proof, if you are satisfied, by the greater weight of the evidence that, at the time of this accident (*name alleged operator*) was the driver of the vehicle involved, then it would be your duty to answer this issue "Yes" in

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favor of the plaintiff.

If, on the other hand, you fail to so find, then you will answer this issue "No" in favor of the defendant.

1. *Greene v. Nichols*, 274 N.C. 18, 161 S.E.2d 521 (1968). See also the circumstantial evidence charge at N.C.P.I.-101.45.

2. *Rector v. Roberts*, 264 N.C. 324, 141 S.E.2d 482 (1965); *Morris v. Bigham*, 6 N.C. App. 490, 170 S.E.2d 534 (1969); *Greene*. For a collection of cases dealing with circumstantial proof of the identity of the operator, see 32 A.L.R.2d 988.