

ASSAULT AND BATTERY--DEFENSE OF ANOTHER FROM FELONIOUS ASSAULT.¹

The (state number) issue reads:

"Did the defendant [assault] [batter] the plaintiff in defense of another person from felonious assault?"

You will answer this issue only if you have answered the issue as to whether the defendant [assaulted] [battered] the plaintiff "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the defendant.² This means that the defendant must prove, by the greater weight of the evidence, three things:

First, that the defendant reasonably believed that it was necessary to use force to protect another person from an imminent felonious assault. A felonious assault is an unprovoked attack with intent³ to cause serious bodily injury or death. A belief is reasonable when a person of ordinary prudence under the same or similar circumstances would believe that force was needed to protect another person from an imminent unprovoked attack intended to cause serious bodily injury or death.

Second, that the defendant used no more force against the

¹See generally *State v. Hornbuckle*, 265 N.C. 312, 314-15, 144 S.E.2d 12, 14 (1965).

²In criminal cases, the burden of proof is on the State to prove the non-existence of facts tending to show self-defense. See N.C.P.I.--Crim. 206.30. Otherwise, criminal cases may be used to determine a self-defense justification in the civil action. *Young v. Warren*, 95 N.C. App. 585, 588, 383 S.E.2d 381, 383 (1989); *Harris v. Hodges*, 57 N.C. App. 360, 361, 291 S.E.2d 346, 347, disc. rev. denied, 306 N.C. 384, 294 S.E.2d 208 (1982).

³For an instruction on intent, see N.C.P.I.--Civil 101.46.

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plaintiff than was reasonably necessary under the circumstances to protect the other person from serious bodily injury or death.⁴

And Third, that the person he defended was not the aggressor. A person can defend another from a felonious assault only if the other person has the right to defend himself. A person who voluntarily and without provocation enters into a fight does not have the right to claim self-defense (unless he first abandons the fight, withdraws from it and gives notice to his adversary that he has done so).

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 defendant [assaulted] [battered] the plaintiff in defense of another person from felonious assault, 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.

⁴State v. McLawhorn, 270 N.C. 622, 629, 155 S.E.2d 198, 203-04 (1967).