

**3.20 FALSE IMPRISONMENT (FALSE ARREST) (Approved 6/89)**

**F. SHOPLIFTING (N.J.S.A. 2C:20-11)**

It is the law of this State that a law enforcement officer, or a special officer, or a merchant, who has probable cause to believe that a person has willfully concealed unpurchased merchandise may, for the purpose of attempting to recover the merchandise, take the person into custody and detain him/her in a reasonable manner for not more than a reasonable time.

So, in deciding whether plaintiff was falsely imprisoned, there are two decisions you are going to have to make.

The first is that plaintiff must prove, by the greater weight of the evidence, that defendant intentionally detained or restrained plaintiff in his/her personal liberty or freedom of movement by taking him/her into custody.

The second, assuming you find that defendant did intentionally restrain plaintiff by taking him/her into custody, involves defendant's claim that he/she had probable cause to believe that plaintiff willfully concealed unpurchased merchandise; that the merchandise could have been recovered by taking plaintiff into custody; that plaintiff was taken into custody in order to try to recover the merchandise; and that plaintiff was detained in a reasonable manner only for a reasonable time.

Probable cause in this regard means that the facts and circumstances known to the officer or merchant were those which would lead a reasonably cautious person to believe that plaintiff had willfully concealed unpurchased merchandise, and that he/she could attempt to recover the merchandise by taking plaintiff into custody and control. Probable cause must be more than mere conjecture or unfounded suspicion.

Willfully means conduct which is intentional and knowledgeable. If plaintiff meant to conceal unpurchased merchandise and was aware that he/she was concealing the unpurchased merchandise, then his/her conduct was willful. The fact that unpurchased merchandise was found concealed upon his/her person or among his/her belongings is evidence for consideration by you, from which you may draw an inference of willful concealment, although you are not required to do so. If you make that inference, it becomes a factor which remains in this case for your consideration together with all of the other facts in the case.

A detention for a reasonable time and in a reasonable manner means the amount of time and the manner that a reasonably cautious person under the circumstances would take or use in attempting the recovery of the unpurchased merchandise by placing a person into custody.

The reasonableness of the time and manner of detention would be affected by the type and size of object allegedly concealed, the cooperation or the lack of cooperation of the person detained in effecting the recover, the place and manner in which he/she was detained, and any other factors that you might think had a bearing on the reasonableness of the time and manner of detention.

If you find that plaintiff was intentionally restrained or confined and that the defendant lacked probable cause either to believe that the plaintiff had willfully concealed unpurchased merchandise or that the defendant could attempt to recover such merchandise by taking plaintiff into custody; or that defendant took the plaintiff into custody in an unreasonable manner or for an unreasonable time, then you must conclude that the detention was unlawful, and you should find that there was a false imprisonment.

If you believe that the plaintiff had willfully concealed unpurchased merchandise and that he/she could attempt to recover that merchandise by taking the defendant into custody, and that the defendant took the plaintiff into custody for this purpose and that he/she detained the plaintiff in a reasonable manner for a reasonable time, then you must find that the detention was lawful. This would mean that there was no false imprisonment.

*[go on to Damages (False Imprisonment False Arrest)), Charge 8.47C]*

***NOTE TO JUDGE***

Recent legislation in the sensitive area of shoplifting has further extended the citizen's authority to arrest where he/she is a merchant or the employee of a merchant. *N.J.S.A. 2C:20-11(e)* states:

A law enforcement officer, or a special officer, or a merchant, who has probable cause for believing that a person has willfully concealed unpurchased merchandise and that he/she can recover the merchandise by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him/her in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer or special officer or merchant shall not render such person criminally or civilly liable in any manner or to any extent whatsoever.

Any law enforcement officer may arrest without warrant any person he/she has probable cause for believing has committed the offense of shoplifting as defined in this section.

A merchant, who causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the merchant has probable cause for believing that the person arrested committed the offense of shoplifting.

*N.J.S.A. 2C:20-11(d)* further presumes:

Any person purposely concealing unpurchased merchandise of any store or other retail mercantile establishment, either on the premises or outside the premises of such store or other retail mercantile establishment, shall be prima facie presumed to have so concealed such merchandise with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof, and the finding of such merchandise concealed

upon the person or among the belongings of such person shall be prima facie evidence of purposeful concealment; and if such person conceals, or causes to be concealed, such merchandise upon the person or among the belongings of another, the finding of the same shall also be prima facie evidence of willful concealment on the part of the person so concealing such merchandise.

Instructions of the court should not include phrase "*prima facie*" in speaking of evidential impact of proof of possession (gambling paraphernalia). *State v. Ruggiero*, 41 N.J. 4 (1963).