

N.C.P.I.—Crim. 236B.25
ASSAULT OR THREAT OF A LAW ENFORCEMENT OFFICER DURING A STREET
TAKEOVER. FELONY.
GENERAL CRIMINAL VOLUME
DECEMBER 2023
N.C. Gen. Stat. § 20-141.10(e)

236B.25 ASSAULT OR THREAT OF A LAW ENFORCEMENT OFFICER DURING A
STREET TAKEOVER. FELONY.

The defendant has been charged with assault or threat of a law enforcement officer during a street takeover.

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt.

First, that the defendant operated a motor vehicle in a street takeover. A street takeover¹ is defined as the unauthorized taking over of a portion of highway, street, or public vehicular area by blocking or impeding the regular flow of traffic with a motor vehicle to perform a motor vehicle stunt,² contest, or exhibition.

Second, that the defendant did so knowingly.

Third, that the defendant [assaulted³ the alleged victim by (*describe assault*)] [knowingly and willfully threatened⁴ the alleged victim].

And Fourth, that the alleged victim was a law enforcement officer and the defendant knew or had reasonable grounds to know that the alleged victim was a law enforcement officer.

(A true threat is defined as an objectively threatening statement communicated by a party who possesses the subjective intent to threaten a listener or identifiable group.⁵ An objectively threatening statement is one that would be understood, by a reasonably prudent person perceiving it within its proper context, as a serious expression of an intent by the speaker to assault another person. Subjective intent requires that the speaker intended the statement to be understood as a threat.⁶ (Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such

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just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom.)⁷⁾

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly operated a motor vehicle in a street takeover, [assaulted] [knowingly and willfully threatened] the alleged victim, the alleged victim was a law enforcement officer and the defendant knew or had reasonable grounds to know that the alleged victim was a law enforcement officer, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1. N.C. Gen. Stat. § 20-141.10(a)(8).

2. A stunt is defined as a burnout, doughnut, wheelie, drifting, or other dangerous motor vehicle activity. See N.C. Gen. Stat. § 20-141.10(a)(9). For a definition of burnout, doughnut, wheelie, or drifting, see N.C. Gen. Stat. § 20-141.10(a).

3. Provided there is no battery involved, choose the most appropriate definition of assault as follows: (An assault is an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.) (An assault is an intentional attempt, by violence, to do injury to the person of another.)

4. The Supreme Court of North Carolina has noted that, under the Free Speech Clause of the First Amendment of the United States Constitution, as incorporated to apply to the states through the Due Process Clause of the Fourteenth Amendment, “the State may not punish an individual for speaking based upon the contents of the message communicated.” *State v. Taylor*, 2021-NCSC-164, ¶ 34. In recognizing limited exceptions to this principle, the State may “criminalize certain categories of expression which, by their very nature, lack constitutional value.” *Id.* Therefore, in order to overcome the constitutional protections provided by the First Amendment, the State must prove that the defendant communicated a “true threat” against the alleged victim(s), necessitating sufficient proof of both an objective and subjective element in order to convict a defendant under N.C. Gen. Stat. § 14-16.7(a). *Id.* at ¶ 42.

5. *State v. Taylor*, 2021-NCSC-164, ¶ 34.

6. In adopting the North Carolina Court of Appeals’ interpretation that the State is required to establish both an objective and subjective component to qualify as a “true threat,” the Supreme Court of North Carolina does not explicitly define either “objective” or “subjective” intent. However, in remanding the case for a jury’s proper consideration of a true threat, the Court expressly quotes the lower court’s diction of objective and subjective

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intent. *State v. Taylor*, 2021-NCSC-164, ¶ 14 (quoting *State v. Taylor*, 270 N.C. App. 514, 557, 841 S.E.2d 776, 814 (2020)).

7. Where there is a serious issue as to subjective intent, the parenthetical phrase may be useful. See N.C.P.I.—Crim. 120.10 (Definition of Intent). Footnote 1 of N.C.P.I.—Crim. 120.10 provides supplemental language on general and specific intent. However, due to the specificity of the requirements of a “true threat” pursuant to *State v. Taylor*, 2021-NCSC-164, the preceding definitions before the parenthetical should be relied on solely as to not confuse the jury with conflicting definitions.