

First Amendment and Criminal Charges Involving Speech

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- 1) **State v. David Warren Taylor**, 841 S.E. 2d 776 (N.C. App. 3/17/2020). **Review allowed by** N.C. Sup. Ct. 847 S.E.2d 412 (9/23/2020).
 - a) Ct. of Appeals ruling changed elements required to prove threats in this statutory offense. Could affect other offenses.
 - b) Charged with and convicted of threatening a court officer under GS 14-16.7(a) (NC Crimes p. 169, plus supp. pp. 55-56)
 - c) Facts involved Facebook statements by defendant about an elected district attorney.
 - d) Court of Appeals held that threats must be “true threats.” That is, “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”
 - e) Opinion based on consideration of First Amendment right to speech, described in cases from other federal and state jurisdictions.
 - f) Court of Appeals deemed true threat an essential element of the offense to be proven by State.
 - g) Threat must be made with the general intent to make the threatening statement (from objective perspective) and a specific intent (a subjective intent to “truly threaten”).
 - h) Traditionally, we would care only about the “reasonable person” perspective and the victim’s perspective.
 - i) On facts, Court of Appeals concluded that statements were vague and unspecific. Also considered evidence like: d’s access to firearms, reporting detective’s concern, evidence that neither victim or investigating officers viewed threats as “true.”
 - j) Defendant’s conviction reversed.
- 2) **Taylor’s** additions/changes to elements of GS 14-16.7(a) are underlined
 - a) (1) defendant (2) knowingly and willfully (3) made a threat
 - b) (4) constituting a “true threat,” that an ordinary, reasonable person would interpret as a serious expression of intent to do harm
 - c) (5) to a court official (6) knowing the person was a court official
 - d) (7) when communicated, D specifically intended statement to be understood by victim as a real threat expressing D’s intention to carry it out
- 3) Are these “true threats?” Do they satisfy a traditional sense of threat?
 - a) “If they ever make me carry a rifle the first man I want to get in my sights is LBJ.”
 - b) “Death to her as well.”
 - c) “She will be the first to go.”
 - d) “Don’t get me started on this. The court system and Most importantly western nc justice system is useless. It’s all about money to the courts than it is about justice. It is time for old Time mtn justice!”
 - e) “I have a gun. I am going to use it to kill John Rubin as soon as this webinar is over.”

4) Trend of greater First Amendment attention in criminal cases

- a) *State v. Mylett*, 374 N.C. 376 (May 1, 2020): decided on issue of conspiracy, but good discussion of First Amendment true threats and **harassment of and communication with jurors** (G.S. 14-225.2(a)(2)).
- b) *State v. Shackelford*, 825 S.E.2d 689 (N.C. App. 2019): set aside **stalking** verdict, saying statute as applied to defendant unconstitutionally restricted his First Amendment speech.
- c) *State v. Bishop*, 368 N.C. 869 (2016): defendant's **cyberbullying** (G.S. 14-458.1(a)(1)(d)) conviction reversed because statute was unconstitutionally overbroad in restricting First Amendment speech.

5) Offenses to think about, in light of **Taylor**

- a) Any offense involving speech or communication as an element could implicate First Amendment analysis
 - i) Harassment of jurors
 - ii) Communicating threats (including threats on educational property or at place of worship)
 - iii) Threat to kill or inflict serious injury on executive, legislative, or court official
 - iv) Harassing telephone calls
 - v) Cyberstalking
 - vi) Stalking
 - vii) Intimidating witness offenses
 - viii) Expressive conduct?
 - ix) Other offenses?

6) Additional consideration based on **Taylor** Court of Appeals opinion

- a) Potentially greater attention to context of threats, meaning presentation and consideration of more evidence surrounding an alleged threat.