
230.65 [INTIMIDATING] [INTERFERING] WITH A WITNESS.

The defendant has been charged with [intimidating] [interfering] with a witness.

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

First, that a person was [summoned] [acting] as a witness in a court of this State.[1]

Second, that the defendant [[intimidated] [attempted to intimidate][2] [interfered with] [attempted to interfere with] [deterred] [attempted to deter] [prevented] [attempted to prevent]] any person who was [summoned] [acting] as a witness in the defendant's case. Intimidate means to make timid or fearful; inspire or affect with fear; frighten.[3]

Third, that the defendant acted intentionally.[4]

And Fourth, that the defendant did so by [*describe the threat or menace or any other conduct that amounts to intimidating or interfering with a witness*][5] [6].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date a person was [summoned] [acting] as a witness in the defendant's case in a court of this state and that the defendant intentionally [[intimidated] [attempted to intimidate] [interfered with] [attempted to interfere with] [deterred] [attempted to deter] [prevented] [attempted to prevent]] by (*describe the threat or menace or any other conduct that amounts to intimidating or interfering with a witness*) 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 It is immaterial that the victim was not regularly summoned or legally bound to attend. *See S. v. Neely*, 4 N.C. App. 475 (1969).

2 Influencing testimony is the gravamen of the "intimidates" part of the statute. *S. v. Neeley*, *supra*, *see also S. v. Isom*, 52 N.C App. 331 (1981).

3 *State v. Hines,* 122 N.C. App. 545, 552 (1996).

4 For the definition of intent *see* N.C.P.I.–Crim 120.10.

5 *See State v. Williams*, 186083 N.C. App. 36233 (2007) (holding that defendant's letter to witness attempting to persuade her to withdraw the charges in another inmate's case did not amount to threats or coercive statements attempting to deter or prevent the witness from coming to court.)

6 It is the better practice to instruct on this element and describe the threat or other conduct alleged. *See* State v. Barnett, 245 N.C. App. 101, 784 S.E.2d 188 (2016) (concluding that it was not plain error when the final mandate omitted the language that the defendant must have acted "by threats"), *reviewed on other grounds*, 369 N.C. 298. 794 S.E.2d 306 (2016).