1920 BOMB SCARES — § 947.015

Statutory Definition of the Crime

Bomb scare, as defined in section 947.015 of the Criminal Code of Wisconsin, is committed by one who intentionally conveys or causes to be conveyed any threat or false information, knowing such to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by means of explosives.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally (conveyed) (caused to be conveyed) (a threat) (information) concerning an attempt or alleged attempt (being made) (to be made) to destroy any property by means of explosives.

   "Intentionally" means that the defendant must have had the mental purpose to convey or cause to be conveyed (a threat) (information) concerning an attempt or alleged attempt (being made) (to be made) to destroy property by means of explosives.[1]

   FOR CASES INVOLVING A THREAT ADD THE FOLLOWING.[2]

   [A "threat" is an expression of intention to do harm and may be communicated orally, in writing, or by conduct. This element requires

that a reasonable person making the threat would foresee that a reasonable person would interpret the threat as a serious expression of intent to do harm. It is not necessary that the person making the threat have the ability to carry out the threat. You must consider all the circumstances in making this determination.]

2. The (threat) (information) was false.[3]

3. The defendant knew that the (threat) (information) was false. This requires only that the defendant believed that the (threat) (information) was false.[4]

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1920 was originally published as Wis JI-Criminal 1905 in 1971. It was renumbered and republished without change in 1987 and revised in April 1993. The instruction was revised in 2008. This revision was approved in 2020; it added to the comment.

In State v. Van Ark, 62 Wis.2d 155, 215 N.W.2d 41 (1974), the Wisconsin Supreme Court held that a violation of § 947.015 was not a lesser included offense of what was then endangering safety by

conduct regardless of life. The current counterpart to that offense is Recklessly Endangering Safety under § 941.30.

1. "Intentionally" means that the actor has the mental purpose to cause the result specified or "is aware that his or her conduct is practically certain to cause that result." § 939.23(3) The "mental purpose" alternative is most likely to apply to this offense. For discussion of the "practically certain" alternative, see Wis JI-Criminal 923B.

2. In State v. Robert T., 307 Wis.2d 488, 746 N.W.2d 564 (2008), the court of appeals held that "§ 947.015 must be read with the limitation that only a false bomb scare that constitutes a 'true threat' can be charged." ¶12. The definition of "threat" in the instruction is based on one of the descriptions of "true threat" in State v. Perkins, 2001 WI 46, ¶28, 243 Wis.2d 141, 626 N.W.2d 762. State v. Robert T. cited Perkins with approval. The Committee concluded that the term "true threat" is a constitutional term of art that need not be communicated to the jury in a situation like the one covered by this instruction where it could be especially confusing given the requirement that the threat be false.

Perkins held that a jury instruction for a threat to a judge in violation of § 940.203 was an incomplete statement of the law because it did not define "threat" as "true threat." This created an unacceptable risk that "the jury may have used the common definition of 'threat,' thereby violating the defendant's constitutional right to freedom of speech." 2001 WI 46, ¶43. The court stated: "The common definition of threat is an expression of an intention to inflict injury on another. The definition of threat for the purposes of a statute criminalizing threatening language is much narrower." 2001 WI 46, ¶43.

The following is the most complete definition of "true threat" offered by the court in Perkins:

> A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. In determining whether a statement is a true threat, the totality of the circumstances must be considered. 2001 WI 46, ¶29.

Perkins involved an orally communicated threat. The instruction is drafted more broadly to be applicable whether the threat is communicated orally, in writing, or by conduct.

3. Although the statute does not specify that the threat be "false," the Committee is satisfied this is implied by the next clause referring to the actor to "knowing such to be false."

This conclusion is bolstered by the decision in State v. Van Ark, supra. In concluding that a violation of § 947.015 was not a lesser included offense of what was then called endangering safety by conduct regardless of life, the court identified the elements of § 947.015 as follows:

> It is apparent from a comparison of the two statutes that sec. 947.015, Stats., is not an included crime in sec. 941.30 because it does require proof of additional facts, namely, the conveyance of a false bomb threat and knowledge that it is false. The state would be required to prove under sec. 941.30 that the "bomb" was imminently dangerous and under sec. 947.015 that the "bomb" was false or inoperable.

62 Wis.2d 155, 164

4. Section 939.23(3) provides that when the word "intentionally" is used in a criminal statute, it requires "knowledge of those facts which are necessary to make [the] conduct criminal and which are set forth after the word 'intentionally.'"

