Previous Next

C.R.S. 18-3-206

Copy Citation

Statutes current through Chapter 307 of the 2021 Regular Session and effective as of June 23, 2021. The inclusion of the 2021 legislation is not final. It will be final later in 2021 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

Colorado Revised Statutes Annotated Title 18. Criminal Code (Arts. 1 — 26) Article 3. Offenses Against the Person (Pts. 1 — 6) Part 2. Assaults (§§ 18-3-201 — 18-3-209)

Notice

This section has more than one version with varying effective dates.

18-3-206. Menacing

(1) A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a class 3 misdemeanor, but, it is a class 5 felony if committed:
(a) By the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon; or
(b) By the person representing verbally or otherwise that he or she is armed with a deadly weapon.

History

Source: L. 71: R&RE, p. 421, § 1. **C.R.S. 1963:** § 40-3-206. **L. 77:** Entire section amended, p. 961, § 12, effective July 1. **L. 2000:** Entire section amended, p. 694, § 5, effective July 1.

State Notes

ANNOTATION

Law reviews.

For article, "The Definition of 'Deadly Weapon' Under the Colorado Criminal Code", see 15 Colo. Law. 1663.

Statute did not unconstitutionally violate the defendant's equal protection rights,despite the defendant's claim that the conduct proscribed by this section, a class 5 felony, was indistinguishable from the conduct proscribed in § 18-9-106 (1)(f) (disorderly conduct with a deadly weapon), a class 2 misdemeanor, in which the actus reus is less specific than the actus reus in this section. People v. Ibarra, 849 P.2d 33 (Colo. 1993).

It is only when the same conduct is proscribed in two statutes and different criminal sanctions apply, that problems arise under equal protection. People v. Ibarra, 849 P.2d 33 (Colo. 1993).

Felony menacing is a specific intent crime. People v. Lundborg, 39 Colo. App. 498, 570 P.2d 1303 (1977).

Felony menacing is not a lesser included offense of second-degree assault. The offense of second-degree **assault** does not establish every essential element of felony menacing and, therefore, the merger doctrine does not apply. People v. Truesdale, 804 P.2d 287 (Colo. App. 1990).

Menacing is not a lesser included offense of attempted extreme indifference murder. People v. Portillo, 251 P.3d 483 (Colo. App. 2010).

The actus reus of felony menacingis "placing another person in fear of imminent serious bodily injury by the use of a deadly weapon", an act more specific than the actus reus of disorderly conduct with a deadly weapon, which is displaying a deadly weapon in an alarming manner in a public place. Therefore, it does not violate the equal protection clause of article II, section 25, of the Colorado constitution to subject defendants to potential criminal liability under both statutes. People v. Torres, 848 P.2d 911 (Colo. 1993).

A physical act supporting an assault conviction without any additional physical action or verbal threat is sufficient to support a menacing conviction. People v. Margerum, 2018 COA 52, 457 P.3d 675, aff'd, 2019 CO 100, 454 P.3d 236.

Court did not err in denying motion for acquittal when defendant charged with felony menacing and evidence showed the victims believed themselves to be in

Failure to instruct jury on "imminent" element was harmless errorwhere prosecutor argued fear was imminent and defense did not challenge whether fear was imminent. Evidence clearly showed fear was imminent. People v. Geisendorfer, 991 P.2d 308 (Colo. App. 1999).

The phrase "use of a deadly weapon"is broad enough to include the act of holding a weapon in the presence of another in a manner that causes the other person to fear for his safety, even if the weapon is not pointed at the other person. People v. Hines, 780 P.2d 556 (Colo. 1989); People v. District Ct., 17th Jud. Dist., 926 P.2d 567 (Colo. 1996).

Felony menacing requires use of deadly weapon. The elements of misdemeanor menacing and felony menacing are identical but for the added requirement of the use of a deadly weapon. People v. Lahr, 200 Colo. 425, 615 P.2d 707 (1980).

Under the felony provision of this section unloaded firearm is a deadly weapon. People v. McPherson, 200 Colo. 429, 619 P.2d 38 (1980) (decided prior to 1981 amendment to § 18-1-901 (3)(e)).

An unloaded firearm is a deadly weapon. People v. Lahr, 200 Colo. 425, 615 P.2d 707 (1980).

Defendant "used" his or her purported HIV status in a manner that could cause the victim to fear for his or her safetywhere the evidence showed that the defendant stated he or she was HIV positive, pinched and scratched the victim, and attempted to bite him or her. People v. Shawn, 107 P.3d 1033 (Colo. App. 2004).

Felony menacing distinguished from first degree burglary. It is possible to commit a first degree burglary without also perpetrating felony menacing. The merger doctrine does not apply because there is no requirement in the first degree burglary statute that a victim be placed in fear of imminent serious bodily injury by a deadly weapon as there is in the felony menacing statute. People v. Sisneros, 44 Colo. App. 65, 606 P.2d 1317 (1980).

And from aggravated robbery. The offense of aggravated robbery may be committed without also committing felony menacing. No merger occurs because the requirement in the felony menacing statute that the actor knowingly places a victim in fear of "serious bodily injury" is distinguishable from the requirement that the robber knowingly places a victim in fear of "bodily injury". People v. Sisneros, 44 Colo. App. 65, 606 P.2d 1317 (1980).

And from attempted first degree assault. Felony menacing and attempted first degree **assault** do not merge. People v. Procasky, 2019 COA 181, — P.3d —.

Voluntary intoxication is not a defense to felony menacing, which is a general intent crime. People v. Breland, 728 P.2d 763 (Colo. App. 1986); People v. Esparza, 757 P.2d 1164 (Colo. App. 1988).

An essential element of the offense is a specific intent to cause fear. People v. Stout, 193 Colo. 466, 568 P.2d 52 (1977).

The specific intent of the defendant to cause fear is the gravamen of the offense of

No reversible error committed when court refused to instruct the jury that if it found the affirmative defense of self-defense applied to any one defendant it applied to them all. Court not persuaded of real possibility that jury could convict the defendant, finding that he acted reasonably toward one victim but not another. People v. Manzanares, 942 P.2d 1235 (Colo. App. 1996).

Reversible error where defendant entitled to raise transferred intent self-defense as an affirmative defenseand court rejected defendant's self-defense jury instructions. People v. Koper, 2018 COA 137, — P.3d —.

Court erroneously submitted instruction to jurywhich included "specific intent" element for "general intent" crime of felony menacing. People v. Crump, 769 P.2d 496 (Colo. 1989).

Menacing is a general intent crime requiring only that the defendant be aware that the defendant's conduct is practically certain to cause the result. People v. Zieg, 841 P.2d 342 (Colo. App. 1992); People v. Segura, 923 P.2d 266 (Colo. App. 1995); People v. District Ct., 17th Jud. Dist., 926 P.2d 567 (Colo. 1996); People v. Saltray, 969 P.2d 729 (Colo. App. 1998); People v. Shawn, 107 P.3d 1033 (Colo. App. 2004).

It is unnecessary for the victim actually to hear or to be cognizant of any threat from defendant;instead, if there is evidence from which the jury could reasonably find that the defendant knew his actions, if discovered, would place the victim in fear of imminent serious bodily injury by use of a deadly weapon, then the intent element of the offense may be established. People v. Saltray, 969 P.2d 729 (Colo. App. 1998).

The jury instruction which did not specify a particular victim,coupled with the comments of the prosecutor, invited the jury to convict without regard to the identity of the victim, making it impossible to determine whether the jury unanimously convicted defendant on the basis of menacing the same victim. People v. Simmons, 973 P.2d 627 (Colo. App. 1998).

Where the evidence of defendant's guilt was overwhelmingand the issue of whether the defendant acted knowingly was not contested at trial, the trial court's error in instructing the jury on the meaning of "knowingly" is not plain error in defendant's conviction for menacing. Espinoza v. People, 712 P.2d 476 (Colo. 1985).

The trial court's omission of the definition of "serious bodily injury" from the jury instructions,although erroneous, did not rise to the level of plain error because the issue of the degree of bodily injury the victim feared from the defendant was not contested at trial. People v. Fichtner, 869 P.2d 539 (Colo. 1994).

Intent to inflict injury not gist of crime. Whether the defendant had the intent or ability to inflict injury is not the gist of felony menacing. People v. McPherson, 200 Colo. 429, 619 P.2d 38 (1980) (decided prior to 1981 amendment to § 18-1-901 (3)(e)).

Conditional or contingent threat satisfies the "threat" element of felony menacing. People v. Hines, 780 P.2d 556 (Colo. 1989); People v. Segura, 923 P.2d 266 (Colo. App. 1995).

presence of another in a manner that causes the other person to fear for his safety. People v. Hines, 780 P.2d 556 (Colo. 1989).

The term "use" necessarily includes the physical possession of a deadly weapon at the time of the crime. People v. Adams, 867 P.2d 54 (Colo. App. 1993).

The term "use" is broad enough to allow the jury to convict the defendant of felony menacingfor defendant's act of returning to the victim at the location where the defendant previously sexually **assaulted** the victim while holding a gun to the victim's head, even though the victim did not see the gun upon the defendant's return. The jury and victim could reasonably believe the defendant still had the gun after the sexual **assault** and could use it to cause fear in the victim. People v. Frye, 872 P.2d 1316 (Colo. App. 1993).

Jury verdictconvicting defendant of felony menacing is not inconsistent with the jury's verdict acquitting defendant of first degree sexual **assault**. People v. Frye, 872 P.2d 1316 (Colo. App. 1993).

Actual subjective fear on the part of the victim is not a necessary elementof this crime. People v. Stout, 193 Colo. 466, 568 P.2d 52 (1977); People v. Williams, 827 P.2d 612 (Colo. App. 1992); People v. District Ct., 17th Jud. Dist., 926 P.2d 567 (Colo. 1996).

Nonetheless, what the victim saw or heard, and his reactions thereto, are relevant considerations in determining whether the defendant had the requisite intent to place him in fear. People v. Gagnon, 703 P.2d 661 (Colo. App. 1985).

Rather, it is only necessary that the defendant be aware that his conduct is practically certain to cause fear. People v. District Ct., 17th Jud. Dist., 926 P.2d 567 (Colo. 1996); United States v. Blackwell, 323 F.3d 1256 (10th Cir. 2003).

When there is one count of felony menacing it is not necessary to prove each of the named victims was placed in fear of imminent serious bodily injury. It is sufficient to prove that the defendant committed the offense against the same listed persons. People v. Manzanares, 942 P.2d 1235 (Colo. App. 1996).

The crime of menacing does not require proof of the intent to rob. People v. Marlott, 191 Colo. 304, 552 P.2d 491 (1976).

Intoxication as defense. If at the time of the incident in question, felony menacing was a specific intent crime, intoxication is available as a defense to negate the requisite specific intent. People v. Sandoval, 42 Colo. App. 503, 596 P.2d 1225 (1979).

Evidence held sufficient to bind police officer over for trial. Johns v. District Court, 192 Colo. 462, 561 P.2d 1 (1977).

Evidence sufficient to indicate that felony prosecution under this section was proper. Biddle v. District Court, 183 Colo. 281, 516 P.2d 645 (1973); People v. Stout, 193 Colo. 466, 568 P.2d 52 (1977); People v. Gonzales, 43 Colo. App. 312, 602 P.2d 6 (1978), rev'd on other grounds, 198 Colo. 450, 601 P.2d 1366 (1979).

Where evidence supports felony conviction, improper misdemeanor instruction does not affect misdemeanor conviction. Where the evidence supported a conviction

misdemeanor menacing to the jury did not affect the defendant's conviction for the lesser included offense, misdemeanor menacing. People v. Lahr, 200 Colo. 425, 615 P.2d 707 (1980).

Felony menacing is not a lesser included offense of attempted second degree murder. People v. Torres, 224 P.3d 268 (Colo. App. 2009).

The offense of second degree murder does not establish every element of felony menacing. Attempted second degree murder requires a defendant to knowingly engage in conduct that is a substantial step toward causing the death of a person. There is no requirement that the victim be in fear of imminent serious bodily injury. Thus, an attempted second degree murder conviction does not necessarily establish all the elements of menacing. People v. Torres, 224 P.3d 268 (Colo. App. 2009).

Misdemeanor menacing is not a lesser included offense of use of a stun gun. People v. Wheeler, 170 P.3d 817 (Colo. App. 2007).

Constitution proscribes retrial when conviction impliedly acquits defendant. The double jeopardy clause proscribes retrial when a felony menacing conviction impliedly acquits the defendant of a second-degree **assault** charge. Ortiz v. District Court, 626 P.2d 642 (Colo. 1981).

Trial court abused discretion in refusing to grant a continuanceto allow stabbing victim's prior felony drug convictions to become final so that defendant could cross-examine victim concerning the convictions for impeachment purposes. People v. Gagnon, 703 P.2d 661 (Colo. App. 1985).

No error where court excluded evidence of actions of victim after menacing occurred,since, in determining the issue of reasonable belief of imminent injury, it is the actions and demeanor of the believed assailant which first occurred that are relevant. People v. Beckett, 782 P.2d 812 (Colo. App. 1989), aff'd, 800 P.2d 74 (Colo. 1990).

Defendant's act of touching a knife to the officer's person was not sufficient to establish the elements of assault-during-escape. To hold, under the present criminal code, that a threat with a deadly weapon constitutes an **assault** with intent to commit bodily injury would eliminate any distinction between the crimes of menacing and **assault** with intent to commit bodily injury. People v. Wilson, 791 P.2d 1247 (Colo. App. 1990).

Viewed in the light most favorable to the prosecution, the evidence was sufficient to induce a person of ordinary prudence to entertain a reasonable belief that defendant committed the crime of felony menacingwhere evidence indicated that defendant, while holding the knife that mortally wounded victim, threatened to kill other person if that person did not leave his residence. People v. District Ct., 17th Jud. Dist., 926 P.2d 567 (Colo. 1996).

A violation of this section qualifies as a violent felony under the federal Armed Career Criminals Act, 18 U.S.C. § 924(e). United States v. Herron, 432 F.3d 1127 (10th Cir. 2005), cert. denied, 547 U.S. 1104, 126 S. Ct. 1895, 164 L. Ed. 2d 579 (2006).

sentencing guidelines. United States v. Armijo, 651 F.3d 1226 (10th Cir. 2011).

A conviction for violation of this section is a conviction of a crime of violence as defined by 18 U.S.C. § 16,and therefore an aggravated felony under 8 U.S.C. § 1101(a)(43)(F), making alien removable under 8 U.S.C. § 1227(a)(2)(A)(iii). Damaso-Mendoza v. Holder, 653 F.3d 1245 (10th Cir. 2011).

Applied in

Miller v. District Court, 193l Colo. 404, 566 P.2d 1063 (1977); Jones v. District Court, 196 Colo. 1, 584 P.2d 81 (1978); People v. Chavez, 629 P.2d 1040 (Colo. 1981); People v. Lichtenstein, 630 P.2d 70 (Colo. 1981); People v. Francis, 630 P.2d 82 (Colo. 1981); People v. Trujillo, 631 P.2d 146 (Colo. 1981); People v. Jones, 631 P.2d 1132 (Colo. 1981); People v. Martinez, 634 P.2d 26 (Colo. 1981); People v. Stoppel, 637 P.2d 384 (Colo. 1981); People v. Mack, 638 P.2d 257 (Colo. 1981); People v. Sanchez, 649 P.2d 1049 (Colo. 1982); People v. Brassfield, 652 P.2d 588 (Colo. 1982); People v. Ferguson, 653 P.2d 725 (Colo. 1982); Watkins v. People, 655 P.2d 834 (Colo. 1982); People v. Dillon, 655 P.2d 841 (Colo. 1982); People v. Shearer, 650 P.2d 1293 (Colo. App. 1982); People v. Bridges, 662 P.2d 161 (Colo. 1983); People v. Jones, 140 P.3d 325 (Colo. App. 2006); Derosier v. Balltrip, 149 F. Supp. 3d 1286 (D. Colo. 2016).

‹ Previous Next ›