

Supreme Court of Florida

No. 82,438

STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES (93-1)

[May 5, 1994]

CORRECTED OPINION

PER CURIAM.

The Supreme Court Committee on Standard Jury Instructions (Criminal) has submitted recommended amendments to the Florida Standard Jury Instructions in Criminal Cases as follows:

1. The committee recommends an amendment to standard jury instruction 3.04(b) (page 38 of the manual) regarding proceedings in insanity cases. The committee believes that the amended instruction more accurately reflects the procedures established in Florida Rule of Criminal Procedure 3.217.

2. The committee recommends a new instruction on insanity--psychotropic medication which is required by Florida

Rule of Criminal Procedure 3.215(c)(2). See Rosales v. State, 547 So. 2d 221 (Fla. 3d DCA 1989).

3. The committee recommends a new set of instructions on attempted murder and manslaughter because of its belief that an instruction integrating elements of attempt with the elements of murder is more understandable than reading the standard instruction on attempt to commit a crime together with the instruction on murder.¹

Following publication of the recommendations in The Florida Bar News, the committee received two letters concerning its proposed amendments. As a result of one of these letters, the committee amended its recommendation with respect to attempted first-degree felony murder. As a result of the other letter, the committee amended its recommendation with respect to attempted voluntary manslaughter, and in order to maintain consistency also proposed a new instruction on manslaughter.

With certain technical changes, the amendments recommended by the committee are set forth in the appendix attached to this opinion. We approve for publication the amendments set forth in the appendix. However, we caution all interested persons that the notes and comments reflect only the

¹ The committee noted that it had great difficulty in drafting an instruction on attempted felony murder which incorporated the language in Amlotte v. State, 456 So. 2d 448 (Fla. 1984). In fact, the committee observed that a majority of its members were persuaded by the dissenting opinion in that case that there could be no such crime as attempted felony murder. Recognizing, however, that its function was not to change existing law, the committee submitted a proposed instruction for that crime.

opinion of the committee and are not necessarily indicative of the views of this Court as to their correctness or applicability. The amendments as set forth in the appendix shall be effective when this opinion becomes final. We wish to express our appreciation to the committee for its dedication in presenting to the Court its recommendations.

It is so ordered.

GRIMES, C.J., and OVERTON, McDONALD, SHAW, KOGAN and HARDING, JJ., concur.

APPENDIX

1. The wording of the last sentence of instruction 3.04(b) (page 38 of the manual) is changed as follows:

I ~~can~~must conduct ~~additional~~further proceedings to determine if ~~he~~the defendant should be committed to a mental hospital, or given other outpatient treatment or released.

2. New instruction on Insanity--Psychotropic Medication:

INSANITY--PSYCHOTROPIC MEDICATION

Note to Judge:

Give, if requested by defendant, at the beginning of trial and in the charge to the jury.

(Defendant) is currently being administered psychotropic medication under medical supervision for a mental or emotional condition.

Psychotropic medication is any drug or compound affecting the mind or behavior, intellectual functions, perception, moods, or emotion and includes anti-psychotic, anti-depressant, anti-manic and anti-anxiety drugs.

3. New instructions on attempted murder and manslaughter:

INTRODUCTION TO ATTEMPTED HOMICIDE

Note to Judge

Read in all attempted murder and attempted manslaughter cases.

In this case (defendant) is accused of (crime charged).

Give degrees as applicable

Attempted murder in the first degree includes the lesser crimes of attempted murder in the second degree, attempted murder

in the third degree and attempted voluntary manslaughter, all of which are unlawful.

An attempted killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find that there was an attempted killing of (victim) by (defendant), you will then consider the circumstances surrounding the attempted killing in deciding if it was attempted first degree murder, or attempted second degree murder, or attempted third degree murder, or attempted voluntary manslaughter, or whether the attempted killing was excusable or resulted from justifiable use of deadly force.

JUSTIFIABLE ATTEMPTED HOMICIDE

The attempted killing of a human being is justifiable and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

EXCUSABLE ATTEMPTED HOMICIDE

The attempted killing of a human being is excusable and therefore lawful under any one of the three following circumstances:

1. When the attempted killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the attempted killing occurs by accident or misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the attempted killing is committed by accident and misfortune resulting from a

sudden combat, if a dangerous weapon is not used and the attempted killing is not done in a cruel and unusual manner.

Definition

"Dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before defendant may be found guilty of attempted murder or any lesser included crime.

ATTEMPTED MURDER--FIRST DEGREE (PREMEDITATED)
F.S. 782.04(1)(a) and 777.04

Before you can find the defendant guilty of Attempted First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

Elements

1. The defendant did some act intended to cause the death of (victim) that went beyond just thinking or talking about it.
2. Defendant acted with a premeditated design to kill (victim).
3. The act would have resulted in the death of (victim) except that someone prevented the defendant from killing (victim) or [he][she] failed to do so.

Definition

A premeditated design to kill means that there was a conscious decision to kill. The decision must be present in the mind at the time the act was committed. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the act. The period of time must be long enough to allow reflection by the defendant. The

premeditated intent to kill must be formed before the act was committed.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the attempted killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the attempted killing.

It is not an attempt to commit first degree premeditated murder if the defendant abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.

ATTEMPTED FELONY MURDER--FIRST DEGREE

F.S. 782.04(1)(a) and 777.04

Before you can find the defendant guilty of Attempted First Degree Felony Murder, the State must prove the following two elements beyond a reasonable doubt:

Elements

Give 1a if
defendant is
actual
perpetrator

1. a. [(Defendant) did some overt act, which could have caused the death of (victim), but did not.]

Give 1b if
defendant is
not actual
perpetrator

b. [Some person other than (defendant) did some specific, overt act which could have caused the death of (victim) but did not; but both (defendant) and the person who did the specific overt act were principals in the commission of (crime alleged).]

Give 2a, 2b, or
2c as
applicable

2. The act was committed as a consequence of and while
 - a. [the defendant was engaged in the commission of (crime alleged).]
 - b. [the defendant was attempting to commit (crime alleged).]
 - c. [the defendant, or an accomplice, was escaping from the immediate scene of (crime alleged).]

In order to convict of attempted first degree felony murder, it is not necessary for the State to prove that the defendant had a premeditated design or intent to kill.

It is not an attempt to commit first degree felony murder if the [defendant] [person who committed the specific overt act] abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of [his][her] criminal purpose.

Notes to Judge

1. Define the crime alleged. If burglary, also define the crime that was the object of burglary.

2. If 1b is given, immediately give principal instruction (3.01 on page 32a).

ATTEMPTED SECOND DEGREE MURDER
F.S. 782.04(2) and 777.04

Before you can find the defendant guilty of Attempted Second Degree Murder, the State must prove the following two elements beyond a reasonable doubt.

Elements

1. (Defendant) intentionally committed an act which would have

resulted in the death of (victim) except that someone prevented (defendant) from killing (victim) or [he][she] failed to do so.

2. The act was imminently dangerous to another and evincing a depraved mind regardless of human life.

Definitions

An act is "imminently dangerous to another and evincing a depraved mind regardless of human life," if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of attempted second degree murder, it is not necessary for the State to prove the defendant had a premeditated intent to cause death.

It is not an attempt to commit second degree murder if the defendant abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of [his][her] criminal purpose.

ATTEMPTED VOLUNTARY MANSLAUGHTER F.S. 782.07 and 777.04

Before you can find the defendant guilty of Attempted Voluntary Manslaughter, the State must prove the following element beyond a reasonable doubt:

Element

1. (Defendant) committed an act [or procured the commission of an act], which was

intended to cause the death of (victim) and would have resulted in the death of (victim) except that someone prevented (defendant) from killing (victim) or [he][she] failed to do so.

However, the defendant cannot be guilty of attempted voluntary manslaughter if the attempted killing was either excusable or justifiable as I have previously explained those terms.

It is not an attempt to commit manslaughter if the defendant abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of [his][her] criminal purpose.

Give only if procurement is alleged and proven

To "procure" means to persuade, induce, prevail upon or cause a person to do something.

Give if attempted manslaughter is being defined as a lesser included offense of attempted first degree premeditated murder

In order to convict of attempted voluntary manslaughter it is not necessary for the State to prove that the defendant had a premeditated intent to cause death.

Notes to Judge

In the event of any reinstruction on attempted voluntary manslaughter, the instructions on justifiable and excusable attempted homicide as previously given on page 61 should be given at the same time. Hedges v. State, 172 So. 2d 824 (Fla. 1965).

There is no crime of attempted involuntary manslaughter (i.e., manslaughter by culpable negligence. See Taylor v. State, 444 So. 2d 931 (Fla. 1983)).

MANSLAUGHTER
F.S. 782.07

Before you can find the defendant guilty of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

- | | |
|--|---|
| Elements | 1. (Victim) is dead. |
| Give 2(a), (b) or (c) depending upon allegations and proof | 2. [Defendant]
(a) intentionally caused the death of (victim).
(b) intentionally procured the death of (victim).
(c) The death of (victim) was caused by the culpable negligence of (defendant). |

However, the defendant cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

Give only if 2(b) alleged and proved.

To "procure" means to persuade, induce, prevail upon or cause a person to do something.

Give only if 2(c) alleged and proved.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly

careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

Give only if
2(a) alleged
and proved, and
manslaughter is
being defined
as a lesser
included
offense of
first degree
premeditated
murder.

In order to convict of manslaughter by intentional act, it is not necessary for the State to prove that the defendant had a premeditated intent to cause death.

Notes to Judge

In the event of any reinstruction on manslaughter, the instructions on justifiable and excusable homicide as previously given on page 61 should be given at the same time. Hedges v. State, 172 So. 2d 824 (Fla. 1965).

In appropriate cases, an instruction on transferred intent should be given.

Original Proceeding - Standard Jury Instructions in Criminal
Cases

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