

Supreme Court of Florida

No. 83,748

STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES (94-1)

ORIGINAL

[June 16, 1994]

PER CURIAM.

The Court recently approved an instruction on attempted first-degree felony murder for inclusion in the Florida Standard Jury Instructions in Criminal Cases. Standard Jury Instructions in Criminal Cases, 19 Fla. L. Weekly S244 (Fla. May 5, 1994). The Supreme Court Committee on Standard Jury Instructions (Criminal) now recommends that a similar instruction be approved for attempted third-degree felony murder. The new instruction would be the same as the one on attempted first-degree felony murder except for the title and the elimination of the reference to burglary in the first Note to Judge. In order to be consistent, we hereby amend the title to the instruction on third-degree murder to read: FELONY MURDER--THIRD DEGREE. We

approve for publication the new instruction which is set forth in the appendix to this opinion.

Further, it has come to our attention that paragraph 2 of the instructions on excusable homicide and excusable attempted homicide erroneously employ the term "accident or misfortune." Accordingly, the Court, on its own motion, amends paragraph 2 of those instructions to read "accident and misfortune."

The new instruction and the amendment shall be effective when this opinion becomes final.

It is so ordered.

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

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

APPENDIX

ATTEMPTED FELONY MURDER--THIRD DEGREE
F.S. 782.04(1)(a) and 777.04

Before you can find the defendant guilty of Attempted Third 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 third 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 third 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.
2. If 1b is given, immediately give principal instruction (3.01 on page 32a).

Original Proceeding - Standard Jury Instructions in Criminal
Cases