

ATTEMPTED MURDER¹

N.J.S.A. 2C:5-1

N.J.S.A. 2C:11-3a(1)

The Indictment charges the defendant with the crime of attempted murder. In order for you to find the defendant guilty of an attempted murder, the State must prove beyond a reasonable doubt that it was the defendant's purpose to cause the death of the victim. More specifically, the law provides that a person is guilty of an attempt to commit the crime of murder, if the person:

[Select appropriate section]

[Attempt-Impossibility]

- (1) Purposely engaged in conduct which was intended to cause the death of the victim, if the attendant circumstances were as a reasonable person would believe them to be;

[or]

[Attempt-When Causing a Particular Result is an Element of the Crime]

- (2) Did or omitted to do anything with the purpose of causing the death of the victim without further conduct on his part.

[or]

[Attempt-Substantial Step]

- (3) Purposely did or omitted to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his causing the death of the victim.

Thus, in order to find the defendant guilty of the crime of attempted murder, the State must prove the following elements beyond a reasonable doubt:

First, it was the defendant's purpose to cause the death of _____.

Secondly, the defendant:

[Select Appropriate Section]

¹ Not to be used if murder is also charged in the indictment. State v. Rhett, 127 N.J. 3(1992).

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[Attempt - Impossibility]

(1) Purposely engaged in conduct which was intended to cause the death of the victim, if the attendant circumstances were as a reasonable person would believe them to be;

[or]

[Attempt-When Causing a Particular Result is an Element of the Crime]

(2) Did or omitted to do anything with the purpose of causing the death of the victim without further conduct on his/her part.

[or]

[Attempt-Substantial Step]

(3) Purposely did or omitted to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his/her causing the death of the victim.

First, the State must prove that the defendant acted purposely.

"Purposely" means it was the person's conscious object to cause the death of the victim.²

Whether the defendant's purpose was to cause the death of the victim is a question of fact for you to decide. Purpose is a condition of the mind which cannot be seen and can only be determined by inference from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his/her purpose was to cause the death of the victim. It is within your power to find that proof of purpose has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances. Such things as the place where the acts occurred, the weapon used, the location, number and nature of wounds inflicted, and all that was

² As noted in the Final Report of the New Jersey Criminal Law Revision Commission, Vol. II: Commentary, p.114: the definition of attempt in the Code follows the conventional pattern of limiting this inchoate crime to purposive conduct." See also, State v. McAllister, 211 N.J. Super. 355 (App. Div. 1986). See also State v. Gilliam, 224 N.J. Super. 759, 762 (App. Div. 1988), reversing an attempted murder conviction, noting that the crime of attempted murder must be limited to attempts to cause death, not serious bodily injury. See also State v. Darby, 220 N.J. Super. 327 (App. Div. 1984), certif. den. 101 N.J. 226 (1985). State v. Rhett, 127 N.J. 3 (1992).

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done or said by the defendant preceding, connected with, and immediately succeeding the events are among the circumstances to be considered. Causing the death of the victim must be within the design or contemplation of the defendant.

The use of a deadly weapon such as a **(describe the deadly weapon used)** in itself may permit you to draw an inference that the defendant's purpose was to take a life. A deadly weapon is any firearm or other weapon, device, instrument, material or substance, which in the manner it is used or is intended to be used, is known to be capable of producing death. . .³ In your deliberations you may consider the weapon used and the manner and circumstances of the attack, and if you are satisfied beyond a reasonable doubt that the defendant (shot) (stabbed) the victim with a (gun) (knife) you may draw an inference from the weapon used, that is the (gun) (knife), and from the manner and circumstances of the attack, as to the defendant's purpose.

Secondly, the State must also prove beyond a reasonable doubt that the defendant:

[Select the appropriate section]

(A) Purposely engaged in conduct which was intended to cause the death of the victim if the attendant circumstances were as a reasonable person would believe them to be.

If the defendant's conduct would have caused the death of the victim had the facts been as a reasonable person would have believed them to be, you should consider that conduct as evidence of the guilt of the attempt to purposely cause the victim's death. It does not matter that the defendant was frustrated in accomplishing his/her objective because the facts were not as a reasonable person would believe them to be; it is no defense that the defendant could not succeed in reaching his/her goal because of circumstances unknown to the defendant.⁴

or

[When Causing a Particular Result is an Element of the Crime of Murder]

(B) Did or omitted to do anything with the purpose of causing the death of the

³ N.J.S.A. 2C:11-1c; State v. Jones, 115 N.J.L. 257, 262 (E. & A. 1935).

⁴ Final Report of the New Jersey Criminal Law Revision Commission, Vol. II: Commentary, p. 114-115 (citing State v. Moretti, 52 N.J. 182, 186-90 (1968)). N.J.S.A. 2C:5-a(1) rejects outright the defense of impossibility.

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victim without further conduct on his/her part.

This means that the defendant did or failed to do anything designed to accomplish the death of the victim without having to take further action. Where the defendant has done all that he/she believes necessary to cause the death of the victim, you should consider that as evidence of guilt of attempt to purposely cause the victim's death.⁵

[or]

[Attempt-Substantial Step]

(C) Purposely did or omitted to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in the course of conduct planned to culminate in his/her causing the death of the victim. However, the step taken must be one which is strongly corroborative of the defendant's criminal purpose. The defendant must be shown to have had a firmness of criminal purpose to cause the death of the victim. Preparatory steps, if any, must be substantial and not just very remote preparatory acts.⁶

In order for you to find the defendant guilty of an attempted murder, the State must prove beyond a reasonable doubt that it was the defendant's purpose to cause the death of the victim. The State, however, is not required to prove a motive. If the State has proved the essential elements of the offense beyond a reasonable doubt, the defendant must be found guilty of the offense regardless of the defendant's motive or lack of motive.

If the State, however, has proved a motive, you may consider that insofar as it gives meaning to other circumstances.⁷ On the other hand, you may consider the absence of motive in weighing whether or not the defendant is guilty of attempted murder.

If after a consideration of all the evidence, you are convinced beyond a reasonable doubt, that the State has proved all of the elements of the crime of attempted murder, then your verdict

⁵ Id. at 116. This is the so-called "last proximate act" doctrine.

⁶ State v. Fornino, 223 N.J. Super. 531 (App. Div. 1988).

⁷ State v. Beard, 16 N.J. 50, 60 (1954).

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must be guilty.

If, however, after a consideration of all the evidence, you find the State has failed to prove each and every element of the crime of attempted murder beyond a reasonable doubt, your verdict must be not guilty.

[Charge where appropriate]

RENUNCIATION OF CRIMINAL PURPOSE

[To be used when the defendant's conduct would otherwise constitute an attempt under sections B or C set forth above]

As part of the defendant's denial of guilt, the defendant raises the defense of renunciation of criminal purpose.

The defendant must prove, by a preponderance of the evidence, that he/she abandoned his/her effort to cause the death of the victim, or otherwise prevented its commission under circumstances manifesting a complete and voluntary decision to abandon his/her criminal purpose. The abandonment of the criminal effort must originate with the defendant and not be forced upon the defendant by some external circumstance, such as police intervention.⁸ Renunciation of criminal purpose will not be deemed to be voluntary if it is motivated in whole or in part by circumstances not present or apparent at the beginning of the defendant's course of conduct which increases the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another victim. Nor is renunciation complete if mere abandonment is insufficient to accomplish avoidance of the death of the victim. In this instance, the defendant must have taken further and affirmative steps that prevented the commission of the offense. A renunciation, in order to be complete, must prevent the completion of the crime.⁹

⁸ Final Report of the New Jersey Criminal Law Revision Commission, Vol. II: Commentary p. 124.

⁹ Final Report of the New Jersey Criminal Law Revision Commission, Vol. II: Commentary, p.125.