

8.16. Attempted Murder—Included Offense

Instruction No. 2.0600. Attempt—Included Offense

[I.C. 35-41-5-1\(a\)](#), [I.C. 35-42-1-1](#).

The crime of murder charged in this case includes the crime of attempted murder. The crime of attempted murder is defined as follows: a person attempts to commit a murder when, acting with the specific intent to kill another person, he engages in conduct that constitutes a substantial step toward killing that person.

To convict the Defendant of attempted murder, the State must have proved each of the following elements:

- 1.The Defendant
- 2.acting with the specific intent to kill [*name victim*]
- 3.did [*set out conduct charged as substantial step*]
- 4.which was conduct constituting a substantial step toward the commission of the intended crime of killing [*name victim*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of attempted murder, a felon, charged in Count ____.

Comments

An attempt is an included offense of the object crime. [I.C. 35-41-1-16\(2\)](#).

“[A] jury instruction purporting to set out the elements of attempted murder ‘must inform the jury that the State must prove beyond a reasonable doubt that the defendant, with intent to kill the victim, engaged in conduct which was a substantial step toward such killing.’ ” [Richeson v. State, 704 N.E.2d 1008, 1009 \(Ind. 1998\)](#), quoting [Spradlin v. State, 569 N.E.2d 948, 950 \(Ind. 1991\)](#).

Under the *Spradlin* rule the crime of attempted murder cannot be committed “knowingly.”

“[C]onfusion and needless appeals could be avoided if courts would use the phrase “specific intent” or “acting with intent to kill a human being ... ” [Clay v. State, 766 N.E.2d 33, 37, n.7 \(Ind. Ct. App. 2002\)](#).