

8.6. Attempted Murder

Instruction No. 2.0200. Attempted Murder.

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

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.

Before you may convict the Accused of attempted murder, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Accused
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 Accused not guilty of the crime of attempted murder, a felony, charged in Count _____ .

Comments

For an attempted murder charge, the jury *must* be instructed on the specific intent to kill:

"[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); *see also Smith v. State*, 459 N.E.2d 355, 358 (Ind. 1984) ("An instruction which correctly sets forth the elements of attempted murder requires an explanation that the act must have been done with the specific intent to kill.").

Under the *Spradlin* rule the crime of attempted murder cannot be committed "knowingly." While *Richeson* held that the *Spradlin* rule does not apply to attempts to commit other crimes, it retained *Spradlin* for attempted murder.

"[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) .