

UATTEMPTED MURDER/ATTEMPTED PASSION/PROVOCATION
MANSLAUGHTER
(N.J.S.A. 2C:11-3, 2C:11-4 and 2C:5-1)

Count _____ of the indictment charges defendant with attempted murder.

[Read count of the indictment]

The law provides¹:

An actor is guilty of attempted murder if he purposely attempted to cause death and did not act in the heat of passion arising from reasonable provocation.

In order to convict defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

1. that it was defendant's purpose to cause the death of (name of victim);
2. that defendant 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

2. that defendant did or omitted to do anything with the purpose of causing the death of (name of victim) without further conduct on his part;

OR

2. that defendant purposely did or omitted to do anything which, under the circumstances as a reasonable person would believe them to be, was an act or omission constituting a substantial step in the course of conduct planned to culminate in the death of (name of victim), and
3. that defendant did not act in the heat of passion arising from reasonable provocation.

If you find that the State has proven beyond a reasonable doubt that defendant purposely attempted to cause the death of (name of victim) and that defendant did not act in the heat of passion resulting from reasonable provocation, then you must find defendant guilty of attempted murder. If you find beyond a reasonable doubt that the State has proven that defendant purposely attempted to cause the death of (name of victim) and that defendant acted in the heat of passion resulting from a reasonable provocation, then you must find defendant guilty of attempted passion/provocation manslaughter.

The first element that the State must prove beyond a reasonable doubt is that defendant's

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purpose was to cause the death of (name of victim).

The second element that the State must prove beyond a reasonable doubt is that defendant

[CHOOSE APPROPRIATE]

[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 Crime]

- (2) Did or omitted to do anything with the purpose of causing the death of (name of 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, was an act or omission constituting a substantial step in a course of conduct planned to culminate in defendant's causing the death of (name of victim). The step taken must be one that is strongly corroborative of criminal purpose. Defendant must be shown to have had a firmness of criminal purpose in light of the steps he/she had already taken. These preparatory steps must have been substantial and not just very remote preparatory acts.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

The term purposely is a condition of the mind. A condition of the mind cannot be seen. It can only be determined by inferences from defendant's conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has

¹ State v. Robinson, 136 N.J. 476 (1994).

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been furnished beyond a reasonable doubt by inferences which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The use of a deadly weapon such as (describe deadly weapon) 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.² 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) (other method of causing injury) (name of victim) with a (gun) (knife) (other weapon), you may draw an inference as to defendant's purpose from the (gun) (knife) (other weapon) used and from the manner and circumstances of the attack.³

The third element that the State must prove beyond a reasonable doubt is that defendant did not act in the heat of passion resulting from a reasonable provocation. Attempted passion/provocation manslaughter has four factors which distinguish it from attempted murder. In order for you to find defendant guilty of attempted murder, the State need only prove the absence of any one of them beyond a reasonable doubt. The four factors are:

1. There was adequate provocation;
2. The provocation actually impassioned defendant;
3. Defendant did not have a reasonable time to cool off between the provocation and the attack, and
4. Defendant did not actually cool off before committing the attack.

The first factor you must consider is whether the State has proven beyond a reasonable doubt that the provocation was not adequate. Whether the provocation is inadequate essentially amounts to whether loss of self-control is a reasonable reaction to the circumstances. In order for the State to carry its burden it must prove beyond a reasonable doubt that the provocation was not sufficient to arouse the passions of an ordinary person beyond the power of his control. For example, words alone do not constitute adequate provocation. On the other hand, a threat with a gun or knife or a

² N.J.S.A. 2C:11-1c.

³ If defendant claims that he/she used deadly force in self defense, a rational basis for passion/provocation manslaughter can be found in evidence supporting the pre-Code theory of imperfect self defense. See footnote 1 of Model Jury Charge, Justification—Self Defense In Self Protection (N.J.S.A. 2C:3-4).

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significant physical confrontation might be considered adequate provocation. Again, the State must prove that the provocation was not adequate.

The second factor you must consider is whether the State has proven beyond a reasonable doubt that defendant was not actually impassioned, that is, that he did not actually lose his/her self-control.

The third factor you must consider is whether the State has proven beyond a reasonable doubt that defendant had a reasonable time to cool off. In other words, you must determine whether the State has proven that the time between the provoking event(s) and the attack was adequate for the return of a reasonable person's self-control.

The fourth factor you must consider is whether the State has proven beyond a reasonable doubt that defendant actually did cool off before committing the attack, that is, that he/she was no longer actually impassioned.

If you find that the State has proven beyond a reasonable doubt that there was not adequate provocation or that the provocation did not actually impassion the defendant or that defendant had a reasonable time to cool off or that defendant actually cooled off and in addition to proving one of those four factors you determine that the State has proved beyond a reasonable doubt that defendant purposely attempted to cause the death of (name of victim), then you must find defendant guilty of attempted murder.

If, on the other hand, you determine that the State has not disproved at least one of the factors of attempted passion/provocation manslaughter beyond a reasonable doubt, but that the State has proven beyond a reasonable doubt that defendant purposely attempted to cause the death of (name of victim), then you must find defendant guilty of attempted passion/provocation manslaughter.

If, however, the State has failed to prove beyond a reasonable doubt that defendant purposely attempted to cause the death of (name of victim), then you must find defendant not guilty of attempted murder or attempted passion/provocation manslaughter.

PROPOSED VERDICT SHEET

On the charge that defendant purposely attempted to cause the death of (name of victim), our verdict is

- A. NOT GUILTY []
- B. GUILTY OF ATTEMPTED
PASSION/PROVOCATION MANSLAUGHTER []

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C. GUILTY OF ATTEMPTED MURDER []