

582 EXAMPLE ATTEMPTED ARMED ROBBERY — § 939.32 and 943.32(2)

The defendant is charged with attempted armed robbery.

Statutory Definition of the Crime

The crime of attempted armed robbery, as defined in § 939.32 and § 943.32 of the Criminal Code of Wisconsin, is committed by one who, with intent to commit armed robbery, does acts toward the commission of that crime which demonstrate unequivocally, under all of the circumstances, that he or she had formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements¹ were present.

Elements of the Crime That the State Must Prove

1. The first element of attempted armed robbery requires that the defendant intended² to commit the crime armed robbery.

The crime of armed robbery is committed by one who³

- takes and carries away property from the person or from the presence of the owner of the property; and
- takes the property with the intent to steal; and
- acts forcibly; and
- uses or threatens to use a dangerous weapon.

"Intent to steal" requires the mental purpose to take and carry away movable property of another without consent and the intent to deprive the owner permanently of possession of the property.

ADD OTHER DEFINITIONS FROM WIS JI-CRIMINAL 1480 AS NECESSARY.⁴

The crime charged against the defendant in this case, however, is not armed robbery as defined, but an attempt to commit the crime of armed robbery.

2. The second element of attempted armed robbery requires that the defendant did acts toward the commission of the crime of armed robbery which demonstrate unequivocally, under all of the circumstances, that the defendant intended to and would have committed the crime of armed robbery except for the intervention of another person or some other extraneous factor.⁵

Meaning of "Unequivocally"

"Unequivocally" means that no other inference or conclusion can reasonably and fairly be drawn from the defendant's acts, under the circumstances.⁶

Meaning of "Another Person"

"Another person" means anyone but the defendant and may include the intended victim.

Meaning of "Extraneous Factor"

An "extraneous factor"⁷ is something outside the knowledge of the defendant or outside the defendant's control.⁸

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all the elements of attempted armed robbery have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 582 EXAMPLE was approved by the Committee in March 2002.

This instruction uses armed robbery as an example to illustrate how the elements of the crime attempted would be integrated with the general pattern instruction for attempts. The elements of the crime of armed robbery are listed under the first element of attempt. Definition of one key term, "intent to steal," is included.

1. See note 2, Wis JI-Criminal 580.
2. See note 3, Wis JI-Criminal 580.

3. These are the elements set forth in Wis JI-Criminal 1480, Armed Robbery, with one change identified below. In that instruction, four elements begin with "the defendant." Those words were removed when the elements were integrated into the general attempt model because the defendant charged with attempt will not have completed the crime and therefore will not have directly committed each of the elements. However, the defendant charged with attempt must have intended that all elements of the crime be completed and must have acted with the intent and knowledge required for the completed crime.

The first element of armed robbery is stated in Wis JI-Criminal 1480 as: "(Name) was the owner of property." An element stated that way is not easily accommodated in the format used by JI 580, which states: "The crime of _____ is committed by one who . . ." This instruction addresses that by combining the first two elements of armed robbery into one element.

4. Several definitions provided in Wis JI-Criminal 1480 are not included in this example: dealing with "owner," "forcibly," "imminent," and "dangerous weapon." Upon request, or when the evidence has focused on any of those issues, the Committee recommends that the definitions be included in the attempt instruction.

5. See note 5, Wis JI-Criminal 580.
6. See note 6, Wis JI-Criminal 580.
7. See note 5, Wis JI-Criminal 580.
8. See note 8, Wis JI-Criminal 580.