

1070 ATTEMPTED FIRST DEGREE INTENTIONAL HOMICIDE — §§ 939.32, 940.01(1)(a)

The defendant is charged with attempted first degree intentional homicide.

Statutory Definition of the Crime

The crime of attempted first degree intentional homicide, as defined in § 939.32 and § 940.01 of the Criminal Code of Wisconsin, is committed by one who, with intent to commit first degree intentional homicide, 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 elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intended to kill (name of victim).

"Intent to kill" means that the defendant had the mental purpose to take the life of another human being or was aware that (his) (her) conduct was practically certain to cause the death of another human being.

2. The defendant did acts toward the commission of the crime of (name intended crime) which demonstrate unequivocally, under all of the circumstances, that the defendant intended to kill and would have killed (name of victim) except for the intervention of another person or some other extraneous factor.

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.

Meaning of "Another Person"

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

Meaning of "Extraneous Factor"

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

When May Intent Exist?

While the law requires that the defendant acted with intent to kill, it does not require that the intent exist for any particular length of time before the act is committed. The act need not be brooded over, considered, or reflected upon for a week, a day, an hour, or even for a minute. There need not be any appreciable time between the formation of the intent and the act. The intent to kill may be formed at any time before the act, including the instant before the act, and must continue to exist at the time of the act.

Deciding About Intent

You cannot look into a person's mind to find intent. Intent to kill 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.

Intent and Motive

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. "Motive" refers to a person's reason for doing something.

While motive may be shown as a circumstance to aid in establishing the guilt of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant intended to kill (name of victim) and that the defendant's acts demonstrated unequivocally that the defendant intended to kill and would have killed (name of victim) except for the intervention of another person or some other extraneous factor, you should find the defendant guilty of attempted first degree intentional homicide.

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

COMMENT

Wis JI-Criminal 1070 was originally published in 1990. This revision was approved by the Committee in December 2000 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction combines the general attempt instruction, Wis JI-Criminal 580, with the instruction for first degree intentional homicide, Wis JI-Criminal 1010. See the footnotes to those instructions for explanations of definitions, etc.

Several adaptations of the general approach recommended by Wis JI-Criminal 580 were possible, which shortened the instruction. Only one element of first degree intentional homicide carries over to the attempt: intent to kill. For a discussion of the law of attempt generally, see the Comment to Wis JI-Criminal 580. For explanation of the Committee's approach to instructing on first degree intentional homicide, see the Comment to Wis JI-Criminal 1010.