

5.2 CRIMINAL SOLICITATION

§ 777.04(2), Fla. Stat.

To prove the crime of Criminal Solicitation, the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) solicited (person alleged) to commit (offense solicited).**
- 2. During the solicitation, (defendant)**
[commanded]
[encouraged]
[hired]
[requested]
(person alleged) to engage in specific conduct, which would constitute the commission of (offense solicited) or an attempt to commit (offense solicited).

It is not necessary that the defendant do any act in furtherance of the offense solicited.

Define the crime solicited. If it is Burglary, also define crime that was object of the burglary. Also define "attempt" (see 5.1).

Definition

To “solicit” means to ask earnestly or to try to induce another person to engage in specific conduct.

Affirmative Defense. Give if applicable. § 777.04(5)(b), Fla. Stat. Carroll v. State, 680 So. 2d 1065 (Fla. 3d DCA 1996). Harriman v. State, 174 So. 3d 1044 (Fla. 1st DCA 2015).

It is a defense to the charge of Criminal Solicitation if the defendant, after soliciting (person solicited) to commit the (offense solicited), persuaded (person solicited) not to do so, or otherwise prevented commission of the offense, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.

Renunciation is not complete and voluntary where the crime solicited was not completed because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time, or circumstances known by the defendant that increased the probability of being apprehended.

If you find that the defendant proved by a preponderance of the evidence that [he] [she] persuaded (person solicited) not to commit the (offense solicited), or otherwise prevented commission of the (offense solicited), under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] not guilty of (crime solicited).

If the defendant failed to prove by a preponderance of the evidence that [he] [she] persuaded (person solicited) not to commit the (offense solicited), or that [he] [she] did not otherwise

prevent commission of the (offense solicited), under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] guilty of (crime solicited), if all the elements of the charge have been proven beyond a reasonable doubt.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

As of November 2015, no case law addressed the issue of whether renunciation remains a defense to a solicitation to commit a crime where some harm was done.

This instruction was adopted in 1981 and amended in 2017.