

6.2 ATTEMPTED FIRST DEGREE PREMEDITATED MURDER

§§ 782.04(1)(a) and 777.04, Fla. Stat.

In the absence of an express concession that the attempted homicide was not excusable or justified, the trial judge must also read Instruction 6.1, Introduction to Attempted Homicide.

To prove the crime of Attempted First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) intended to commit the crime of First Degree Premeditated Murder.**
- 2. (Defendant) committed an overt act toward the commission of First Degree Premeditated Murder that went beyond mere preparation.**
- 3. (Defendant) failed to complete the First Degree Premeditated Murder.**

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

To prove that a First Degree Premeditated Murder had taken place, the State would have to prove the following three elements beyond a reasonable doubt:

- 1. (Victim) is dead.**
- 2. The death was caused by the criminal act of (defendant).**
- 3. There was a premeditated killing of (victim).**

“A premeditated killing” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you

beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Lesser Included Offenses

ATTEMPTED FIRST DEGREE PREMEDITATED MURDER — 782.04(1) AND 777.04			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Attempted second degree (depraved mind) murder		782.04(2) and 777.04	6.4
Attempted manslaughter by act		782.07 and 777.04	6.6
Attempted aggravated battery (intentionally cause great bodily harm)		784.045(1)(a)1 and 777.04	8.4 and 5.1
Attempted battery (intentionally cause bodily harm)		784.03(1)(a)2 and 777.04	8.3 and 5.1
	Attempted felony murder	782.051(2)	6.3
	Attempted felony murder	782.051(3)	6.3(a)
	Aggravated battery	784.045	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

See Instruction 5.1 for the affirmative defense of renunciation.

See Instruction 6.7 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc. and instruction 3.15 for the scoresheet multiplier in § 775.0823, Fla. Stat.

If there is evidence the defendant acted in the heat of passion on legally adequate provocation, judges must explain the concept of heat of passion to the jury. See Instruction 7.2.

A charging document that tracks the language of the Attempted First-Degree Premeditated Murder statute does not charge Attempted Felony Murder. See *Weatherspoon v. State*, 214 So. 3d 578 (Fla. 2017).

This instruction was adopted in 1994 [636 So. 2d 502] and amended in 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], on December 15, 2021, and on December 15, 2023.