

6.4 ATTEMPTED SECOND DEGREE MURDER

§§ 782.04(2) 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 Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) intentionally committed an overt act that could have resulted in the death of (victim) but did not result in (victim's) death.**
- 2. The act was imminently dangerous to another and demonstrated a depraved mind without regard for human life.**
- 3. The overt act went beyond mere preparation.**

An act is “imminently dangerous to another and demonstrated a depraved mind” if it is an act or series of acts that:

- 1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and**
- 2. is done from ill will, hatred, spite, or an evil intent, and**
- 3. is of such a nature that the act itself indicates an indifference to human life.**

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 convict the defendant of Attempted Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

Give only if there is evidence that the defendant acted in the heat of passion on legally adequate provocation.

An issue in this case is whether (defendant) did not have a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation. In order to find that the defendant did not have a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation:

- a. **there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and**
- b. **a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and**
- c. **there was not a reasonable amount of time for a reasonable person to cool off; and**
- d. **a reasonable person would not have cooled off before committing the act that would have resulted in death; and**
- e. (defendant) **was, in fact, so provoked and did not cool off before [he] [she] committed the act that would have resulted in the death of (victim).**

If you have a reasonable doubt about whether the defendant had a depraved mind without regard for human life because [he] [she] acted in the heat passion based on adequate provocation, you should not find [him] [her] guilty of Attempted Second Degree Murder.

Lesser Included Offenses

ATTEMPTED SECOND DEGREE MURDER — 782.04(2) AND 777.04

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Attempted manslaughter by act		782.07 and 777.04	6.6
	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.

This instruction was adopted in 1994 and amended in 1997 [697 So. 2d 84], 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], and on December 15, 2023.