

6.1 INTRODUCTION TO ATTEMPTED HOMICIDE

Read in all attempted murder and attempted manslaughter cases.

Chapter 776, Fla. Stat., and § 782.02, Fla. Stat., when considered together, cover the lawful use of deadly force. If the defendant is relying on a claim that his or her use of deadly force was lawful, appropriate parts of instruction 3.6(f) should be given in addition to this instruction. Hamilton v. State, 387 So. 3d 305 (Fla. 4th DCA 2024).

(Defendant) **is accused of** (crime(s) charged) **in Count[s]** (insert the number of the relevant count(s)).

Give degrees of attempted homicides as applicable.

Attempted First Degree Murder includes the lesser crimes of Attempted Second Degree and Attempted Manslaughter, all of which are forms of attempted homicide and all of which are unlawful. However, an attempted homicide that was excusable or that was committed by the justifiable use of deadly force is lawful.

If you find that there was an attempted homicide of (victim) by (defendant), you will then consider the circumstances surrounding the attempted homicide in deciding whether it was Attempted First Degree Murder, or Attempted Second Degree Murder, or Attempted Manslaughter, or whether the attempted homicide was excusable or resulted from the justifiable use of deadly force.

JUSTIFIABLE ATTEMPTED HOMICIDE

§ 782.02, Fla. Stat.

The use of deadly force to attempt to kill a human being is justifiable, and therefore lawful, if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in or upon any dwelling house in which the defendant was at the time of the attempted killing. “Deadly force” means force likely to cause death or great bodily harm. “Great bodily harm” means harm that is more than slight, trivial, minor, or moderate.

EXCUSABLE ATTEMPTED HOMICIDE

§ 782.03, Fla. Stat.

An attempted homicide is excusable and therefore lawful under any one of the three following circumstances:

- 1. When the attempted homicide is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or**
- 2. When the attempted homicide occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or**

- 3. When the attempted homicide is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the attempted killing is not done in a cruel and unusual manner.**

A “dangerous weapon” is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give only if applicable.

An object not designed to inflict bodily harm may nonetheless be a “dangerous weapon” if it was used in a manner likely to cause death or great bodily harm.

Comments

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a dangerous weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an “object.”

This instruction was adopted in 1994 and amended in 2014 [148 So. 3d 1204], on April 3, 2020, on July 29, 2022, and on September 12, 2025.