

Entry 23 Jury Instructions

No. 1

INTRODUCTION TO HOMICIDE

In Count I of this case GARY LEE GOODMAN is accused of Murder in the Second Degree.

Murder in the Second Degree includes the lesser crime Manslaughter, all of which are unlawful.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find GARY LEE GOODMAN killed MOE HELTON, you will then consider the circumstances surrounding the killing in deciding if the killing was Murder in the Second Degree or was Manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force.

No. 2

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon GARY LEE GOODMAN.

No. 3

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

1. When the killing 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 killing occurs by accident and misfortune in the heat of passion upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

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"Dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before GARY LEE GOODMAN may be found guilty of Murder in the Second Degree or any lesser included crime.

No. 4

MURDER—SECOND DEGREE

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

1. MOE HELTON is dead.
2. The death was caused by the criminal act of GARY LEE GOODMAN.
3. There was an unlawful killing of MOE HELTON by an act imminently dangerous to another and evincing a depraved mind without regard for human life.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and evincing 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.

In order to convict of Second Degree Murder, it is not necessary for the State to prove GARY LEE GOODMAN had an intent to cause death.

No. 6

MANSLAUGHTER

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

1. MOE HELTON is dead.
2. GARY LEE GOODMAN'S act or acts caused the death of MOE HELTON.

However, GARY LEE GOODMAN cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide:

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The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon GARY LEE GOODMAN.

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

- 1 When the killing 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 killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
- 3 When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

In order to convict of manslaughter by act, it is not necessary for the State to prove that GARY LEE GOODMAN had an intent to cause death, only an intent to commit an act that was not justified or excusable and which caused death.

No. 7

INTRODUCTION TO ATTEMPTED HOMICIDE

In Count II of this case GARY LEE GOODMAN is accused of Attempted Murder in the Second Degree.

Attempted murder in the second degree includes the lesser crime of attempted voluntary manslaughter, all of which are unlawful.

An attempted killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find that there was an attempted killing of JOHN ELDER by GARY LEE GOODMAN, you will then consider the circumstances surrounding the attempted killing in deciding if it was attempted first degree murder, or attempted second degree murder, or attempted third degree murder, or attempted voluntary manslaughter, or whether the attempted killing was excusable or resulted from justifiable use of deadly force.

No. 8

JUSTIFIABLE ATTEMPTED HOMICIDE

The attempted killing of a human being is justifiable and lawful if necessarily done while resisting an attempt to murder or commit a felony upon GARY LEE GOODMAN, or to commit a felony in any dwelling house in which GARY LEE GOODMAN was at the time of the attempted killing.

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No. 9

EXCUSABLE ATTEMPTED HOMICIDE

The attempted killing of a human being is excusable and therefore lawful under any one of the three following circumstances:

1. When the attempted killing 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 killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the attempted killing 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.

"Dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before defendant may be found guilty of attempted murder or any lesser included crime.

No. 10

ATTEMPTED SECOND DEGREE MURDER

To prove the crime of Attempted Second Degree Murder, the State must prove the following two elements beyond a reasonable doubt:

1. GARY LEE GOODMAN intentionally committed an act which would have resulted in the death of JOHN ELDER except that someone prevented GARY LEE GOODMAN from killing JOHN ELDER or he failed to do so.
2. The act was imminently dangerous to another and evincing a depraved mind without regard for human life.
3. An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and evincing 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.

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In order to convict of Attempted Second Degree Murder, it is not necessary for the State to prove GARY LEE GOODMAN had an intent to cause death.

It is not an attempt to commit second degree murder if GARY LEE GOODMAN abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

No. 11

ATTEMPTED VOLUNTARY MANSLAUGHTER

To prove the crime of Attempted Voluntary Manslaughter, the State must prove the following element beyond a reasonable doubt:

GARY LEE GOODMAN committed an act which was intended to cause the death of JOHN ELDER and would have resulted in the death of JOHN ELDER except that someone prevented GARY LEE GOODMAN from killing JOHN ELDER or he failed to do so.

However, GARY LEE GOODMAN cannot be guilty of Attempted Voluntary Manslaughter if the attempted killing was either excusable or justifiable as I have previously explained those terms.

It is not an attempt to commit manslaughter if GARY LEE GOODMAN abandoned the attempt to commit the offense or otherwise prevented its commission under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

In order to convict of Attempted Voluntary Manslaughter it is not necessary for the State to prove that GARY LEE GOODMAN had a premeditated intent to cause death.

No. 12

JUSTIFIABLE USE OF DEADLY FORCE

An issue as to Counts I and II in this case is whether GARY LEE GOODMAN acted in self-defense. It is a defense to the offense with which GARY LEE GOODMAN is charged if the death of MOE HELTON or the injury to JOHN ELDER resulted from the justifiable use of deadly force.

“Deadly force” means force likely to cause death or great bodily harm.

The use of deadly force is justifiable only if GARY LEE GOODMAN reasonably believes that the force is necessary to prevent imminent death or great bodily harm to himself while resisting:

1. another’s attempt to murder him, or

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2. any attempt to commit a forcible felony upon him.

Murder, Voluntary Manslaughter, and Attempted Homicide are forcible felonies.

A person is justified in using deadly force if he reasonably believes that such force is necessary to prevent

1. imminent death or great bodily harm to himself or another, or
2. the imminent commission of a forcible felony against himself or another.

In deciding whether defendant was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing GARY LEE GOODMAN need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, GARY LEE GOODMAN must have actually believed that the danger was real.

There is no duty to retreat where GARY LEE GOODMAN was not engaged in any unlawful activity other than the crime(s) for which GARY LEE GOODMAN asserts the justification.

If GARY LEE GOODMAN was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force, if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another, or to prevent the commission of a forcible felony.

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of GARY LEE GOODMAN and MOE HELTON and JOHN ELDER.

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether GARY LEE GOODMAN was justified in the use of deadly force, you should find GARY LEE GOODMAN not guilty.

However, if from the evidence you are convinced that GARY LEE GOODMAN was not justified in the use of deadly force, you should find him guilty if all the elements of the charge have been proved.

No. 13

CARRYING CONCEALED WEAPONS

To prove the crime of Carrying a Concealed Firearm charged in Count III, the State must prove the following two elements beyond a reasonable doubt:

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1. GARY LEE GOODMAN knowingly carried on or about his person a firearm, to wit: a handgun.
2. The firearm was concealed from the ordinary sight of another person.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive.

"Concealed firearm" means any firearm which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person.