CH. 5
ATTEMPT

(Attempt decisions are also contained in the various substantive offense chapters.)

§5

Illinois Supreme Court

People v. Boyce, 2015 IL 117108 An attempt occurs where, with intent to commit a specific offense, a person performs any act that constitutes a substantial step toward the commission of that offense. (720 ILCS 5/8-4(a)) The general attempt provision applies to all offenses unless the legislature intended that a more specific crime include attempt or application of the attempt statute to a principal offense would create an inherent impossibility. Legislative intent that a more specific crime includes attempt is shown by the inclusion of explicit "attempt" language in the definition of the specific offense.

The court concluded that under Illinois law uncommunicated requests to commit a crime do not constitute solicitation of murder. However, the court also found that the attempt statute applies to the offense of solicitation. Thus, a person who sends a mailed solicitation of murder which does not reach the intended recipient may be convicted of attempt solicitation.

Defendant's conviction for attempt solicitation of murder was affirmed.

People v. Terrell, 99 Ill.2d 427, 459 N.E.2d 1337 (1984) Defendant was convicted of attempt armed robbery based on the fact that he had concealed himself in some weeds near a service station, which was about to open, while possessing a stocking mask and a loaded revolver. Also, defendant attempted to elude the police and offered a weak excuse for his presence (that he intended to buy cigarettes at the service station, although he had no money). The evidence was sufficient to support the conviction.

People v. Woodward, 55 Ill.2d 134, 302 N.E.2d 62 (1973) An indictment for attempt need not include the elements of the substantive offense. Thus, an attempt burglary indictment was sufficient where it alleged the elements of attempt and that a burglary was intended. See also, People v. Lonzo, 59 Ill.2d 115, 319 N.E.2d 481 (1974); People v. Williams, 52 Ill.2d 455, 288 N.E.2d 406 (1972) (attempt indictment need not set out the crime attempted as specifically as would be required in an indictment for the actual commission of the offense); People v. Sanders, 7 Ill.App.3d 848, 289 N.E.2d 110 (1st Dist. 1972) (attempt theft indictment was valid despite the absence of any allegation concerning defendant's intention to permanently deprive).

People v. Elmore, 50 Ill.2d 10, 276 N.E.2d 325 (1971) Attempt requires intent plus an act; mere preparation to do something, without an act constituting a substantial step, is not attempt.

Illinois Appellate Court

People v. Bell, 2020 IL App (4th) 170804 To establish defendant's guilt of escape, the State was required to prove beyond a reasonable doubt that defendant had the intent to commit the offense and that he took a "substantial step" toward its commission. Whether defendant took a substantial step is a fact-dependent question, and courts may look for guidance in case law as well as the Model Penal Code.

Defendant's reliance on another attempt escape case, **People v. Willis**, 204 Ill. App. 3d 590 (1990), was unconvincing. While the defendant in **Willis** had been able to run out of his cell and to the elevator, and defendant here never made it out of his cell, such progress is not required to constitute a substantial step toward escape. Instead, the court looked to Model Penal Code section 5.01(2) and found the substantial step element satisfied by defendant's (1) "lying in wait " where he hid in his cell, (2) "reconnoitering" where he had drawn a detailed overhead map of the prison, and (3) "possession, collection or fabrication of materials to be employed" in the escape, where defendant constructed a "dummy" out of linens which he placed in his bed during an inmate count. Defendant's attempt escape conviction was affirmed.

People v. Peters, 2018 IL App (2d) 150650 Three sheriff's deputies went to defendant's residence to conduct a well-being check on defendant's wife. Defendant refused to open the door when the deputies knocked and announced their presence and purpose. When the deputies refused defendant's requests that they leave, defendant opened fire through the front door, striking two of the deputies. Defendant then came outside, where the third deputy shot at him. Defendant responded, "I hope you're ready to die 'cause I am" and fired shots in the direction of the third deputy, but did not hit him. Defendant was convicted of attempt murder of each deputy, and he challenged the State's proof of intent with regard to the deputy who was not shot. The Appellate Court noted that poor marksmanship is not a defense to attempt murder and found the evidence sufficient to establish intent to kill.

People v. Sweigart, 2013 IL App (2d) 110885 A person is guilty of attempt when with intent to commit a specific offense, he does any act that constitutes a substantial step toward the commission of that offense. 720 ILCS 5/8-4(a). Defendant need not have completed the last proximate act to the actual commission of a crime, and his subsequent abandonment of his criminal purpose is no defense. Mere preparation is not enough.

The modern rule, as expressed in the Model Penal Code, is to place emphasis on the nature of the steps taken, rather than what remains to be done. The maxim that an attempt must bring defendant in "dangerous proximity" to success in carrying out his intent is not wholly inconsistent with the modern rule in that a substantial step is required and mere preparation is not enough. But by shifting emphasis from what remains to be done to what the actor has already done, the Model Penal Code standards enable a trier to fact to find a substantial step even where the commission of the crime still requires several major steps to be taken. But a substantial step can be found only where there is "clearly specific conduct which can only be directed at the specific identified victim or crime if 'strongly corroborative of the actor's criminal purpose.'"

Under any of these standards, the State proved defendant guilty of child abduction by attempting to lure a child to his home from a grocery store without the consent of the parent for other than a lawful purpose. 720 ILCS 5/10-5(b)(10). Defendant approached a child near the exit of a store and asked the child if he wanted to come to defendant's home. Defendant's van was parked in the parking lot but was easily accessible. The child's family was nearby, but they were not in earshot. Defendant could have successfully abducted the child if the child had agreed to accompany defendant. Additionally, defendant quickly left the scene when the child refused and the child's sister approached, he lied to the police about where he spoke to the child in the store, and the police recovered weapons, child's toys, lingerie, wigs, and sex toys, including restraint devices, from the trunk of defendant's car.

People v. Oduwole, 2013 IL App (5th) 120039 To convict defendant of the inchoate offense of attempt, the prosecution must prove that he took a substantial step toward the commission of an offense, with the intent to commit that offense. What constitutes a substantial step must be determined on a case-by-case basis. There must be an act or acts toward the commission of the principal offense, and the act or acts must not be too far removed in time and space from the conduct that constitutes the principal offense. A defendant does not have to complete the last proximate act to the actual commission of the principal offense, but mere preparation is not enough. The acts taken in furtherance of the offense must place the defendant in dangerous proximity to success.

Under the Model Penal Code, possessing materials to be used in the commission of an offense can be sufficient to support an attempt conviction if the materials are specifically designed for an unlawful purpose or can serve no lawful purpose under the circumstances.

Defendant, a college student, was convicted of attempting to make a terrorist threat. A licensed gun dealer notified the authorities that defendant had asked him to act as the transfer agent for firearms that defendant had purchased over the internet. The dealer's concern was that defendant might be a straw purchaser. The police then found a piece of paper partially protruding from under the center console of defendant's locked car, on which defendant had written that a "murderous rampage similar to the VR shooting" would occur at another university if $50,000 did not reach a paypal in the next seven days, and that "THIS IS NOT A JOKE!"

In a search of defendant's campus apartment, the police also found notebooks of rap lyrics using the same symbols and words found on the piece of paper, a .25 caliber pistol, and a computer. Microsoft Movie Maker had been removed from the computer's hard drive. Defendant also had a PayPal account in the name of Jeff Robinson.

The court reversed defendant's conviction because the State failed to prove that defendant took a substantial step toward the commission of the offense of making a terrorist threat. The writing found in defendant's car was not visible to anyone looking inside the vehicle and there was no evidence that the defendant was going to disseminate the writing. The Movie Maker file had been removed from the computer prior to defendant's arrest. PayPal accounts and Movie Maker files are not materials specifically designed for an unlawful purpose. The evidence demonstrates, at best, preparatory activities that were consistent with a variety of scenarios, and did not prove defendant was in dangerous proximity to success.

People v. Bell, 2012 IL App (5th) 100276

Defendant was charged with attempted possession of anhydrous ammonia under 720 ILCS 646/25(a)(1). Section 646/25(a)(1) defines the offense as "knowingly attempt[ing] to engage in the possession of anhydrous ammonia with the intent that the anhydrous ammonia be used to manufacture methamphetamine." At trial, the court gave a non-IPI instruction which defined the offense in terms of the statute. However, the trial judge declined to give IPI Crim. No. 6.05, which states the general definition of attempt, including that the act in question must constitute a "substantial step" toward commission of the offense.

The Appellate Court found that the trial judge erred by refusing to give IPI Crim. No. 6.05. Even where a statute contains a specific definition of an attempt offense, Illinois case law provides that the elements of the offense include the commission of a "substantial step" toward the crime. Otherwise, mere preparation to commit a crime would constitute an attempt. Thus, the trial court should have given IPI Crim. No. 6.05 in addition to the statutory definition of attempt possession of anhydrous ammonia.

However, the failure to give IPI Crim. No. 6.05 was not plain error. The erroneous omission of a jury instruction constitutes plain error under the second prong of the plain error standard only if there is a serious risk that the jury convicted the defendant because it did not understand the applicable law. That standard was not satisfied here, where the essential disputed issue was whether the defendant was accountable for the actions of the principal, and not whether the actions of the principal constituted a substantial step toward the offense of attempting to possess anhydrous ammonia. Because the jury was correctly instructed concerning accountability, and because the evidence of a "substantial act" by the principal was overwhelming and undisputed, there is no danger that the jury convicted the defendant due to the absence of an instruction that a "substantial step" is an element of the offense.

People v. Lipscomb-Bey, 2012 IL App (2d) 110187

The elements of an attempt crime are the intent to commit a specific offense and an act that constitutes a substantial step toward the commission of the offense. What constitutes a substantial step is determined by each case's unique facts and circumstances. Mere preparation is not enough. The act must not be too far removed in time and space from the conduct that constitutes the principal offense. A substantial step occurs when the act puts the defendant in dangerous proximity to success.

A person commits the offense of armed habitual criminal if he receives, sells, possesses, or transfers any firearm and has certain requisite prior convictions. The State did not prove that defendant took a substantial step toward the commission of that offense. Defendant showed up to negotiate the terms of the sale of a firearm, but the basic terms of the sale such as price and type of gun still had to be negotiated, and a separate encounter would have been necessary to actually transfer the gun as defendant had no gun in his possession. Defendant was not in dangerous proximity to success given that many essentials remained before a sale could occur.

People v. Hawkins, 311 Ill.App.3d 418, 723 N.E.2d 1222 (4th Dist. 2000) Whether particular acts constitute a "substantial step" for purposes of the attempt statute is a "troublesome" issue that is to be determined by the facts and circumstances of each case. Although the "last proximate act" of an offense need not occur in order to constitute an "attempt," mere preparation to commit a crime does not constitute a "substantial step." Instead, a defendant commits a "substantial step" where his actions place him in "dangerous proximity to success."

Here, defendant committed attempt criminal sexual assault under 720 ILCS 5/12-13(a)(2), as his conduct constituted a substantial step toward criminal sexual assault while the victim was unable to give consent, where defendant sat on a bed in a darkened room, removed his shoes, crawled between the sheets, and announced that he was there to "kick it" with the occupant, especially where there was evidence that defendant had just engaged in intercourse with a sleeping person in a home a short distance away. Defendant exhibited his intent to engage in sexual penetration, and came within a "dangerous proximity of success." Although defendant did not remove the rest of his clothing, touch the occupant's genitals or breasts, act aggressively, order the occupant to remove her clothes, or demand sexual activity, whether a substantial step has occurred is determined by the acts which the defendant commits, not by the number of uncompleted steps which would be required to complete the offense. However, the court emphasized that its holding should not be interpreted as suggesting that similar conduct would have constituted a substantial step had defendant been charged with committing "sexual penetration" by force (under §12-13(a)(1)).

People v. Taylor, 314 Ill.App.3d 943, 733 N.E.2d 902 (2d Dist. 2000) The offense of attempt armed violence exists under Illinois law. A defendant may be convicted of attempt even where the crime in question was completed.

People v. Montefolka, 287 Ill.App.3d 199, 678 N.E.2d 1049 (1st Dist. 1997) Defendant did not engage in a "substantial step" toward sexual assault where he twice asked the complainant to remove her underwear. The court distinguished People v. Jones, 175 Ill.2d 126, 676 N.E.2d 646 (1997), in which the accused was found to have taken a "substantial step" where he exposed himself and asked the complainant to engage in sexual conduct.

People v. Davis, 130 Ill.App.3d 864, 474 N.E.2d 878 (4th Dist. 1985) In an attempt armed robbery trial, the trial court committed plain error by failing to sua sponte instruct the jury on the definition of robbery. "Where the failure to instruct concerns a disputed issue essential to the determination of defendant's guilt or innocence, fundamental fairness requires that the conviction be reversed."

People v. Brown, 75 Ill.App.3d 503, 394 N.E.2d 63 (3d Dist. 1979) Conviction for attempt theft was reversed. Though defendant intended to steal "pop bottles" from a supermarket enclosure surrounded by a ten foot fence, he did not take a "substantial step" where he climbed the fence and saw the bottles, but was unable to get his friends to help remove them. Defendant was not in "dangerous proximity of carrying out his intended theft for he had neither the tools (i.e., ladder) nor the assistance necessary to do so."

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