

Uniform Laws Annotated  
Model Penal Code (Refs & Annos)  
Part I. General Provisions  
Article 5. Inchoate Crimes

Model Penal Code § 5.01

§ 5.01. Criminal **Attempt**.

Currentness

(1) **Definition of Attempt.** A person is guilty of an **attempt** to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(a) purposely engages in conduct that would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(c) purposely does or omits to do anything that, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

(2) **Conduct That May Be Held Substantial Step Under Subsection (1)(c).** Conduct shall not be held to constitute a substantial step under Subsection (1)(c) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negating the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime.

(3) **Conduct Designed to Aid Another in Commission of a Crime.** A person who engages in conduct designed to aid another to commit a crime that would establish his complicity under Section 2.06 if the crime were committed by such other person, is guilty of an **attempt** to commit the crime, although the crime is not committed or **attempted** by such other person.

(4) **Renunciation of Criminal Purpose.** When the actor's conduct would otherwise constitute an **attempt** under Subsection (1)(b) or (1)(c) of this Section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Article, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, that increase the probability of detection or apprehension or that make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

#### Editors' Notes

#### EXPLANATORY NOTE

Subsection (1) sets forth the general requirements for an **attempt**. For analytical clarity, it divides the cases into three types: those where the actor's conduct would constitute the crime if the circumstances were as he believed them to be; those where the actor has completed conduct that he expects to cause a proscribed result; and those where the actor has not yet completed his own conduct, and the problem is to distinguish between acts of preparation and a criminal **attempt**. In this instance, liability depends upon the actor having taken a "substantial step" in a course of conduct planned to culminate in commission of a crime. In all three situations the mens rea is purpose, with two exceptions: with respect to the circumstances under which a crime must be committed, the culpability otherwise required for commission of the crime is also applicable to the **attempt**; and with respect to offenses where causing a result is an element, a belief that the result will occur without further conduct on the actor's part will suffice. The impossibility defense is rejected, liability being focused upon the circumstances as the actor believes them to be rather than as they actually exist.

Subsection (2) elaborates on the preparation-**attempt** problem by indicating what is meant by the concept of "substantial step" contained in Subsection (1)(c). Conduct cannot be held to be a substantial step unless it is strongly corroborative of the actor's criminal purpose. A list of kinds of conduct that corresponds with patterns found in common law cases is also provided, with the requirement that the issue of guilt be submitted to the jury if one or more of them occurs and strongly corroborates the actor's criminal purpose.

Subsection (3) fills what would otherwise be a gap in complicity liability. Section 2.06 covers accomplice liability in situations where the principal actor actually commits the offense. In cases where the principal actor does not commit

an offense, however, it is provided here that the accomplice will be liable if he engaged in conduct that would have established his complicity had the crime been committed.

Subsection (4) develops the defense of renunciation, which can be claimed if the actor abandoned or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The meaning of "complete and voluntary" is elucidated in the second paragraph of the provision. The defense is an affirmative defense, which under Section 1.12 means that the defendant has the burden of raising the issue and the prosecution has the burden of persuasion.

For detailed Comment, see MPC Part I Commentaries, vol. 2, at 298.

#### Relevant Additional Resources

Additional Resources listed below contain your search terms.

#### LAW REVIEW AND JOURNAL COMMENTARIES

"Analyzing 18 U.S.C. § 2113(A) of the Federal Bank Robbery Act: Achieving Safety and Upholding Precedent Through Statutory Amendment". Jennifer M. Lota Seton Hall Circuit Review, 7 (2011).

"**Attempt**, preparation, and harm: The case of the jealous ex-husband". John Hasnas. 9 Ohio State Journal of Criminal Law 545 (2012).

**Attempted** stalking: An **attempt**-to-almost-**attempt**-to-act. Nick Zimmerman. 20 N.Ill.U.L.Rev. 219 (2000).

"Danger: The ethics of preemptive action". Larry Alexander and Kimberly Kessler Ferzan. 9 Ohio State Journal of Criminal Law 545 (2012).

"Defining inchoate crime: An incomplete **attempt**". Michael T. Cahill. 9 Ohio State Journal of Criminal Law 545 (2012).

Element analysis in defining criminal liability: Model penal code and beyond. Paul H. Robinson and Jane A. Grall. 35 Stan.L.Rev. 681 (1983).

From *Rethinking to Internationalizing Criminal Law*. George P. Fletcher. 39 Tulsa L.J. 979 (Summer 2004).

"Ignorance and mistake". Kenneth W. Simons. 9 Ohio State Journal of Criminal Law 545 (2012).

Is intent an essential element of criminal **attempt** in Maine? 34 Me.L.Rev. 479 (1982).

New **attempt** laws: Unsuspected threat to Fourth Amendment. Robert L. Misner. 33 Stan.L.Rev. 201 (1981).

"Rethinking **attempt** under the Model Penal Code". William T. Pizzil. 9 Ohio State Journal of Criminal Law 545 (2012).

Should voluntary abandonment be a defense to **attempt** crimes? Note, 26 Am.Crim.L.Rev. 441 (1988).

#### LIBRARY REFERENCES

Criminal Law 44, 69, 71, 73

Westlaw Topic No. 110

C.J.S. Criminal Law §§ 114-123, 137-138

#### Relevant Notes of Decisions (142)

View all 149

Notes of Decisions listed below contain your search terms.

#### Generally

The type of criminal **attempt**, under which a person purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be, concerns a completed crime which fails of its purpose because the facts are not as defendant believes them to be. *State v. Kornberger*, N.J.Super.A.D.2011, 16 A.3d 1107, 419 N.J.Super. 295, certification denied 29 A.3d 741, 208 N.J. 368. Criminal Law 44

A person must act with the purpose to commit a substantive offense to be found guilty of an **attempt**. *State v. Mendez*, N.J.Super.A.D.2001, 785 A.2d 945, 345 N.J.Super. 498, certification granted 793 A.2d 718, 171 N.J. 340, affirmed 814 A.2d 1043, 175 N.J. 201. Criminal Law 44

The two elements of the offense of **attempt** are that the actor intend to commit an offense, and that the actor takes a substantial step toward completion of the offense. *Com. v. Henley*, Pa.1984, 474 A.2d 1115, 504 Pa. 408. Criminal Law 44

Criminal **attempt** and possessing instruments of crime are both inchoate crimes. *Com. v. Simpson*, Pa.Super.1983, 462 A.2d 821, 316 Pa.Super. 115. Criminal Law 44; Disorderly Conduct 121

Elements of the crime of **attempt** are an intent to commit a specific crime and any act constituting a substantial step toward the commission of that crime. *Com. v. Chance*, Pa.Super.1983, 458 A.2d 1371, 312 Pa.Super. 435. Criminal Law 44

A person commits an **attempt** when, with intent to commit a specific crime, he does any act which constitutes substantial step toward the commission of that crime. *Com. v. Griffin*, Pa.Super.1983, 456 A.2d 171, 310 Pa.Super. 39. Criminal Law 44

Criminal **attempt** exists when a person with intent to commit a crime does any act which constitutes a substantial step toward the commission of that act. *Com. v. Bryant*, Pa.Super.1980, 423 A.2d 407, 282 Pa.Super. 600. Criminal Law 44

Entering, without breaking, a vehicle not adapted for overnight accommodation of persons, with intent to steal, constitutes an **attempted** theft under the new code so that it was improper to dismiss a prosecution for such activity on the theory that unlawful entry of an ordinary vehicle is no longer an offense following the adoption of the code. *State v. Velez*, N.J.Super.A.D.1980, 422 A.2d 451, 176 N.J.Super. 136, certification denied 427 A.2d 590, 85 N.J. 504. Burglary 2

Conviction for an **attempt** may be found even on an indictment charging the completed crime. *Com. v. Danko*, Pa.Super.1980, 421 A.2d 1165, 281 Pa.Super. 97. Indictment And Information 190

Defendant was improperly convicted of both **attempted** burglary and possession of an instrument of crime for trying to break into a restaurant by banging on the door with a hammer, in that under § 906 of this title defendant could not be convicted of more than one inchoate crime for conduct designed to end in the same ultimate crime. *Com. v. Jackson*, Pa.Super.1980, 421 A.2d 845, 280 Pa.Super. 522. Criminal Law 29(11)

An **attempt** is a crime of the same degree as the most serious crime which is **attempted** except for first-degree crimes. *State v. Jovanovic*, N.J.Super.1980, 416 A.2d 961, 174 N.J.Super. 435, affirmed 436 A.2d 938, 181 N.J.Super. 97. Criminal Law 44

A defendant could be convicted of **attempted** statutory rape. *Com. v. Smith*, Pa.Super.1974, 324 A.2d 483, 227 Pa.Super. 355. Infants 1597; Sex Offenses 93

#### Purpose of law

Use of the word “**attempts**” in the definition of a substantive offense does not necessarily reflect a legislative intent to import the law of **attempt**, including the “purposeful” culpability requirement, into that offense. *State v. Mendez*, N.J.Super.A.D.2001, 785 A.2d 945, 345 N.J.Super. 498, certification granted 793 A.2d 718, 171 N.J. 340, affirmed 814 A.2d 1043, 175 N.J. 201. Criminal Law 44

One of main purposes of criminal **attempt** statute is to ensure that person who acts with purpose of committing crime does not escape punishment merely because crime was not completed; criminalization of **attempt** focuses on intent of actor to cause criminal result, rather than resulting harm. *State v. Robinson*, N.J.1994, 643 A.2d 591, 136 N.J. 476. Criminal Law 44

### Definitions

Definition of **attempt** found in Crimes Code is expansion of the crime of **attempt** in that it no longer concentrates on the acts that remain to be done by defendant but, instead, focuses on the acts defendant has completed. *Com. v. Donton*, Pa.Super.1995, 654 A.2d 580, 439 Pa.Super. 406. Criminal Law 44

### Substantial step

The type of criminal **attempt** when causing a particular result is an element of the crime, under which a person is guilty when he does or omits to do anything with the purpose of causing such result without further conduct on his part, involves a situation where the criminal act is very nearly complete and requires one more step either beyond the actor's control or not requiring his control for completion. *State v. Kornberger*, N.J.Super.A.D.2011, 16 A.3d 1107, 419 N.J.Super. 295, certification denied 29 A.3d 741, 208 N.J. 368. Criminal Law 44

The “substantial step” requirement in the “**attempt**” statute is satisfied if a defendant acts in a way that is strongly corroborative of the firmness of his purpose to carry out the crime. *State v. Farrad*, N.J.2000, 753 A.2d 648, 164 N.J. 247. Criminal Law 44

Though mere preparatory steps may constitute **attempt**, very remote preparatory acts are excluded from the definition of **attempt**. *State v. Sharp*, N.J.Super.L.1993, 661 A.2d 1333, 283 N.J.Super. 368, affirmed 661 A.2d 1297, 283 N.J.Super. 296, certification denied 663 A.2d 1364, 142 N.J. 458. Criminal Law 44

**Attempt** to commit specific crime exists where person performs act which constitutes substantial step toward commission of crime. *Com. v. Edwards*, Pa.Super.1990, 582 A.2d 1078, 399 Pa.Super. 545, appeal denied 600 A.2d 1258, 529 Pa. 640. Criminal Law 44

Criminal **attempt** is found where a person, while possessing intent to commit a crime, does an act which constituted a substantial step toward the commission of that crime. *Com. v. Humpheys*, Pa.Super.1987, 532 A.2d 836, 367 Pa.Super. 154, appeal denied 541 A.2d 1136, 518 Pa. 624. Criminal Law 44

**Attempt** exists, within contemplation of statute defining offense of simple assault as an **attempt** to either cause bodily injury or place another in fear by physical menace, when a person with intent to commit a crime does any act which constitutes a substantial step toward commission of that crime. *Com. v. Carter*, Pa.Super.1984, 478 A.2d 1286, 329 Pa.Super. 490. Criminal Law 44

Evidence that defendant opened victim's car door during course of attack, as well as other evidence, was sufficient to support inference that attackers had intent to commit theft and that substantial step toward the commission of such

crime had been taken, as required to convict defendant of **attempt** to commit theft. Com. v. Ebo, Pa.Super.1980, 421 A.2d 465, 280 Pa.Super. 181. Larceny ¶ 66

“Substantial step” test broadens scope of **attempt** liability by concentrating on acts which defendant has done rather than focusing on acts remaining to be done before actual commission of the crime. Com. v. Gilliam, Pa.Super.1980, 417 A.2d 1203, 273 Pa.Super. 586. Criminal Law ¶ 44

An **attempt** to commit arson occurred when defendant solicited a detective to burn his building and then engaged in conduct which was not only designed to aid detective in committing arson, but was strongly corroborative of defendant's criminal purpose and satisfied “substantial step” requirement of governing statute, this section. State v. Jovanovic, N.J.Super.Resen.1980, 416 A.2d 961, 174 N.J.Super. 435, affirmed 436 A.2d 938, 181 N.J.Super. 97. Arson ¶ 13

Evidence that defendant carried prosecutrix to back of an abandoned house, that he held her shoulders, that he threatened to grab her, and that he lifted her skirt up approximately six inches demonstrated that defendant had the requisite intent to commit, at the minimum, an indecent assault and had taken substantial steps toward completion of that act, and thus sustained his conviction for **attempted** indecent assault. Com. v. White, Pa.Super.1975, 335 A.2d 436, 232 Pa.Super. 176. Sex Offenses ¶ 283; Sex Offenses ¶ 284

### Solicitation

Under New Jersey law, solicitation is punishable as a criminal **attempt**. U.S. v. Shabazz, C.A.3 (N.J.) 2000, 233 F.3d 730. Criminal Law ¶ 45

Solicitation is punishable as an **attempt** within this section making a person guilty of **attempt** to commit a crime when, acting with the kind of culpability otherwise required for the commission of the crime, he purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime. State v. Jovanovic, N.J.Super.Resen.1980, 416 A.2d 961, 174 N.J.Super. 435, affirmed 436 A.2d 938, 181 N.J.Super. 97. Criminal Law ¶ 44

Defendant, having been convicted of common-law offense of solicitation to commit arson, was subject to liability for **attempt** to commit a crime of the second degree, namely, aggravated arson, and since his sentence of 360 days to the county correctional institute was less than the maximum provided for the congruent offense, he failed to establish the threshold requirements for resentencing in that he was not sentenced to a term of imprisonment that was greater than the maximum period for the congruent offense. State v. Jovanovic, N.J.Super.Resen.1980, 416 A.2d 961, 174 N.J.Super. 435, affirmed 436 A.2d 938, 181 N.J.Super. 97. Sentencing And Punishment ¶ 2255

### Aiding another to commit crime

The congruent offense to solicitation is criminal **attempt** within this section making a person who engages in conduct designed to aid another to commit a crime guilty of an **attempt** to commit the crime although the crime is not committed or **attempted** by such other person. State v. Jovanovic, N.J.Super.Resen.1980, 416 A.2d 961, 174 N.J.Super. 435, affirmed 436 A.2d 938, 181 N.J.Super. 97. Criminal Law ¶ 44

### Burglary

Per se assumption does not arise in **attempted** burglary prosecutions that evidence of forced opening into occupied structure automatically gives rise to acceptable inference of intent to commit crime inside. *Com. v. Wilamowski*, Pa.1993, 633 A.2d 141, 534 Pa. 373. Burglary ☞ 29

In prosecution for **attempted** burglary, defendant's testimony as to his intent was direct testimony, but lower court, trying case without jury, had responsibility to appraise testimony, and could reject it. *Com. v. Cannon*, Pa.Super.1982, 443 A.2d 322, 297 Pa.Super. 106. Criminal Law ☞ 554

To establish **attempted** burglary, Commonwealth was bound to prove both intent to enter building or occupied structure, or separately secured or occupied portion thereof, and intent to commit crime after entering. *Com. v. Cannon*, Pa.Super.1982, 443 A.2d 322, 297 Pa.Super. 106. Burglary ☞ 11

In prosecution wherein defendant was convicted of **attempted** burglary, testimony that defendant broke into backyard of premises through locked gate under cover of darkness and his own testimony, rejected by the court trying case without jury, that he was not in the backyard at all, permitted inference that he entered the yard intending to cross to house, to enter it, and, once inside, to commit crime of theft, leaving premises when light was turned on in house, and evidence thus sustained conviction. *Com. v. Cannon*, Pa.Super.1982, 443 A.2d 322, 297 Pa.Super. 106. Burglary ☞ 41(3)

Trier of fact could accept credibility of officer's testimony and reject credibility of defendant's testimony and, considering defendant's admission that he had screwdriver in his possession at scene of **attempted** burglary and officer's testimony that defendant was using screwdriver to try to open lock, defendant could be found guilty of **attempted** burglary and possession of instrument of crime. *Com. v. Von Aczel*, Pa.Super.1981, 441 A.2d 750, 295 Pa.Super. 242. Burglary ☞ 41(9); Burglary ☞ 41(10)

In charging **attempted** burglary, Commonwealth was not required to specify in indictment what crime accused allegedly intended to commit, but where Commonwealth did specify such crime, i.e., theft, it was required to prove the requisite intent for that crime and thus was required to prove both intent to enter building and intent to commit theft after entering. *Com. v. Von Aczel*, Pa.Super.1981, 441 A.2d 750, 295 Pa.Super. 242. Burglary ☞ 19; Burglary ☞ 28(2)

## Robbery

The inchoate crime of **attempted** robbery is a lesser-included offense of robbery, and the failure to complete the crime of robbery becomes part of the proofs essential to establish an **attempt** to commit robbery. *State v. Farrad*, N.J.2000, 753 A.2d 648, 164 N.J. 247. Indictment And Information ☞ 190

One who **attempts** to commit a theft, with the aggravating circumstances for a robbery being present, is guilty, if at all, of robbery. *State v. Schenck*, N.J.Super.L.1982, 452 A.2d 223, 186 N.J.Super. 236. Robbery ☞ 1

Even though store keeper in response to court's inquiry testified that neither of men whom defendant drove to store demanded or took any money, this did not preclude jury from concluding that murder occurred during course of **attempted** robbery, where **attempt** to commit theft could be reasonably inferred from action taken by the men. *Com. v. Everett*, Pa.Super.1982, 445 A.2d 514, 299 Pa.Super. 182. Homicide ☞ 1165

Trial court's statement at guilty plea colloquy to the effect that the offense of **attempt** to commit robbery constitutes "the **attempt** to take property from another by putting them in fear and by use of force, and at the time of the **attempt** the person doing so is in full possession of his mental capabilities," sufficiently apprised defendant of the elements of the offense. *Com. v. White*, Pa.Super.1982, 440 A.2d 1198, 295 Pa.Super. 13. Criminal Law ☞ 273.1(4)

### Bribery

Evidence that defendant participated in **attempt** to bribe arresting officer to testify falsely at codefendant's suppression hearing supported defendant's conviction for tampering with witness. *Com. v. Dumas*, Pa.Super.1982, 445 A.2d 782, 299 Pa.Super. 335. Obstructing Justice ☞ 170(12)

Evidence that defendant participated in **attempt** to bribe arresting officer who testified falsely at codefendant's suppression hearing supported defendant's conviction for conspiracy. *Com. v. Dumas*, Pa.Super.1982, 445 A.2d 782, 299 Pa.Super. 335. Conspiracy ☞ 47(13)

### Homicide

Under law of Pennsylvania, **attempted** murder requires proof of intent to kill. *Rock v. Zimmerman*, C.A.3 (Pa.) 1992, 959 F.2d 1237, certiorari denied 112 S.Ct. 3036, 505 U.S. 1222, 120 L.Ed.2d 905. Homicide ☞ 558

Recognition of the crime of **attempted** passion/provocation manslaughter, for the purpose of mitigating an intention to kill arising out of a reasonable provocation, punishes the **attempt** and ensures that one who acts with a specified level of culpability and the required criminal purpose is punished for that behavior, regardless of whether the criminal result is achieved; thus, the purposes underlying the crimes of passion/provocation manslaughter and criminal **attempt** are harmonized. *State v. Viera*, N.J.Super.A.D.2001, 787 A.2d 256, 346 N.J.Super. 198, certification denied 803 A.2d 634, 174 N.J. 38. Homicide ☞ 667; Homicide ☞ 671; Homicide ☞ 712

In order for defendant to be guilty of **attempted** murder, state must prove beyond reasonable doubt, first, that it was defendant's purpose to cause death of victim and, second, that defendant purposely did anything which, under the circumstances as a reasonable person would believe them to be, was an act constituting a substantial step in course of conduct planned to culminate in his causing death of victim. *State v. Sharp*, N.J.Super.L.1993, 661 A.2d 1333, 283 N.J.Super. 368, affirmed 661 A.2d 1297, 283 N.J.Super. 296, certification denied 663 A.2d 1364, 142 N.J. 458. Homicide ☞ 558; Homicide ☞ 559

**Attempted** murder requires commission of substantial step in course of conduct that is to culminate in commission of crime. *State v. Sharp*, N.J.Super.A.D.1995, 661 A.2d 1297, 283 N.J.Super. 296, certification denied 663 A.2d 1364, 142 N.J. 458. Homicide ☞ 559

Person charged with **attempted** murder must be found to have acted with culpability required for crime of murder, as well as to have acted with purpose of causing result that is element of murder, namely, death of another. *State v. Robinson*, N.J.1994, 643 A.2d 591, 136 N.J. 476. Homicide ☞ 558

There is no crime of **attempted** third-degree murder. *Com. v. Barnyak*, Pa.Super.1994, 639 A.2d 40, 432 Pa.Super. 483, appeal denied 652 A.2d 1319, 539 Pa. 674, certiorari denied 115 S.Ct. 2554, 515 U.S. 1130, 132 L.Ed.2d 808. Homicide ☞ 561(4)

Defendant, who had tested positive for human immunodeficiency virus (HIV), could be found guilty of **attempted** murder upon proof that defendant intended to kill corrections officer by biting him, regardless of whether it is medically possible for bite to transmit HIV; under statute governing criminal **attempts**, it was sufficient that defendant himself believed he could cause death by biting his victim and that he intended to do so. *State v. Smith*, N.J.Super.A.D.1993, 621 A.2d 493, 262 N.J.Super. 487, certification denied 634 A.2d 523, 134 N.J. 476. Homicide ☞ 558



Specific intent to kill is necessary to support conviction for **attempted** murder; **attempt** to commit murder can only constitute an **attempt** to commit murder of first degree because both second and third-degree murder are unintended results of specific intent to commit felony or serious bodily harm, not to kill. Com. v. Spells, Pa.Super.1992, 612 A.2d 458, 417 Pa.Super. 233, appeal granted 631 A.2d 1006, 535 Pa. 633, appeal dismissed as improvidently granted 643 A.2d 1078, 537 Pa. 350. Homicide ☞ 558; Homicide ☞ 561(2)

Person may be convicted of **attempted** murder if he takes a substantial step toward the commission of a killing, with specific intent in mind to commit such an act. Com. v. Hobson, Pa.Super.1992, 604 A.2d 717, 413 Pa.Super. 29. Homicide ☞ 558; Homicide ☞ 559

Imposition of three sentences of **attempted** murder upon defendant who set fire to house with intent to kill each of its three occupants did not violate double jeopardy clause. Com. v. Williams, Pa.1987, 522 A.2d 1095, 514 Pa. 124, certiorari denied 108 S.Ct. 2852, 487 U.S. 1208, 101 L.Ed.2d 889. Double Jeopardy ☞ 182

One is guilty of **attempted** murder if he takes substantial step toward commission of killing with specific intent in mind to commit such act. Com. v. Ford, Pa.Super.1983, 461 A.2d 1281, 315 Pa.Super. 281. Homicide ☞ 558; Homicide ☞ 559

While a person who only intends to commit a felony may be guilty of second-degree murder if a killing results, and a person who only intends to inflict bodily harm may be guilty of third-degree murder if a killing results, it does not follow those persons would be guilty of **attempted** murder if a killing did not occur; they would not be guilty of **attempted** murder because they did not intend to commit murder, but only intended to commit a felony or to commit bodily harm. Com. v. Griffin, Pa.Super.1983, 456 A.2d 171, 310 Pa.Super. 39. Homicide ☞ 558

Defendant's conviction for theft by receiving would have been admissible in prosecution of defendant on charge of criminal **attempt** to commit murder. Com. v. Kaster, Pa.Super.1982, 446 A.2d 286, 300 Pa.Super. 174. Witnesses ☞ 337(17)

Letter which was sent by defendant to friend after police chief was shot and which contained drawing depicting police officer of neighboring town chained and hanging by noose in front of burning house was admissible in prosecution of defendant on charge of criminal **attempt** to murder police chief. Com. v. Kaster, Pa.Super.1982, 446 A.2d 286, 300 Pa.Super. 174. Criminal Law ☞ 438(2)

Although circumstantial, evidence in prosecution on charge of criminal **attempt** to commit murder was sufficient to sustain conviction. Com. v. Kaster, Pa.Super.1982, 446 A.2d 286, 300 Pa.Super. 174. Homicide ☞ 1168

Evidence presented by Commonwealth was sufficient to prove that defendant was perpetrator of crime charged and that his acts constituted crime of **attempted** murder. Com. v. Sanders, Pa.Super.1982, 445 A.2d 820, 299 Pa.Super. 410. Homicide ☞ 1168; Homicide ☞ 1177

### Rape

Defendant's actions in applying pressure to victim's throat and in loosening and beginning to remove his pants constituted a substantial step towards commission of a rape and was sufficient to sustain the conviction for **attempted** rape. Com. v. Simpson, Pa.Super.1983, 462 A.2d 821, 316 Pa.Super. 115. Sex Offenses ☞ 95

Where victim was grabbed and dragged involuntarily, defendant threatened to kill her, and expressed his intention to have sex with her, substantial step in effectuating an intended rape took place, thus defendant could properly be found guilty of **attempted** rape. Com. v. Martin, Pa.Super.1982, 452 A.2d 1066, 307 Pa.Super. 118. Sex Offenses ☞ 95

Factfinder could reasonably infer from testimony that **attempted** rape was abandoned whether in whole or in part out of fear of detection, and thus defense of renunciation was not available to defendant. Com. v. Martin, Pa.Super.1982, 452 A.2d 1066, 307 Pa.Super. 118. Sex Offenses ¶ 122

Evidence, including presence of scratch marks on defendant's neck similar to those described by victim, was sufficient to sustain conviction of **attempted** rape. Com. v. Keeler, Pa.Super.1982, 448 A.2d 1064, 302 Pa.Super. 324. Sex Offenses ¶ 282

Evidence that defendant forced 12-year-old girl into basement, fondled her genitalia, and began to unzip his pants before she escaped was sufficient to support conviction for **attempted** rape. Com. v. Moody, Pa.Super.1982, 441 A.2d 371, 295 Pa.Super. 106. Infants ¶ 1750; Sex Offenses ¶ 284

In prosecution for **attempted** rape, trial counsel was not ineffective in not objecting to introduction of photograph used in identification process where trial counsel had reasonable basis for not objecting in that he **attempted** to impeach identification testimony of victim by pointing out dissimilarities between photograph and her description of her assailant. Com. v. Moody, Pa.Super.1982, 441 A.2d 371, 295 Pa.Super. 106. Criminal Law ¶ 1933

### Receiving stolen property

Defendant at least **attempted** to receive stolen automobile when he placed his hand on automobile with intent to enter it, but was interrupted by police. State v. McCoy, N.J.Super.A.D.1988, 537 A.2d 787, 222 N.J.Super. 626, affirmed and remanded 561 A.2d 582, 116 N.J. 293. Receiving Stolen Goods ¶ 4

In determining whether defendant was guilty of **attempting** to receive stolen property, trier of fact could consider the defendant's beliefs that the merchandise was stolen, notwithstanding the fact that the items had already been recovered by the police and were being offered to the defendant by an informant. Com. v. Henley, Pa.Super.1983, 459 A.2d 365, 312 Pa.Super. 564, affirmed 474 A.2d 1115, 504 Pa. 408. Receiving Stolen Goods ¶ 3

### Disorderly conduct

An **attempt** to commit a disorderly persons offense is not itself an offense. State v. Clarke, N.J.Super.A.D.1985, 486 A.2d 935, 198 N.J.Super. 219. Disorderly Conduct ¶ 103

### Assault

To show an **attempt** to inflict bodily injury, it must be shown that actor had specific intent to cause bodily injury. Com. v. Richardson, Pa.Super.1994, 636 A.2d 1195, 431 Pa.Super. 496. Assault And Battery ¶ 49

In absence of actual injury, specific intent to cause injury is required in order to commit crimes of simple assault by **attempting** to cause bodily injury or aggravated assault by **attempting** to cause serious bodily injury or **attempting** to cause bodily injury with deadly weapon. In re Maloney, Pa.Super.1994, 636 A.2d 671, 431 Pa.Super. 321. Assault And Battery ¶ 49; Assault And Battery ¶ 55; Assault And Battery ¶ 56

### Renunciation of criminal purpose

Factfinder could reasonably infer from testimony that **attempted** rape was abandoned whether in whole or in part out of fear of detection, and thus defense of renunciation was not available to defendant. *Com. v. Martin*, Pa.Super.1982, 452 A.2d 1066, 307 Pa.Super. 118. Sex Offenses ↻ 122

Prisoner, who scaled fence within prison walls that led to recreation yard and then to prison wall, but who went only so far as yard and was still in prison when he gave up his plan to escape, was not guilty of **attempted** prison breach. *Com. v. McCloskey*, Pa.Super.1975, 341 A.2d 500, 234 Pa.Super. 577. Escape ↻ 5.5

### Arrests

In person's conduct is such that officer has probable cause to arrest, e.g., for **attempted** burglary or for **attempt** to buy or sell drugs, arrest can properly be made under Code of Criminal Justice, and no ordinance is needed to authorize arrest. *State v. Crawley*, N.J.1982, 447 A.2d 565, 90 N.J. 241. Arrest ↻ 62

### Failure to flee

In prosecution for **attempted** burglary with intent to commit theft, jury could find that defendant's failure to flee did not show that he was standing by door with some lawful purpose in mind, but rather that he did not flee because he had no reasonable chance to. *Com. v. Morgan*, Pa.Super.1979, 401 A.2d 1182, 265 Pa.Super. 225. Burglary ↻ 41(3)

### State of mind

While murder may be committed with either purposeful or knowing state of mind, **attempt** must be purposeful, and no lesser mental state will suffice, even if some other mental state could establish underlying crime. *State v. Jackmon*, N.J.Super.A.D.1997, 702 A.2d 489, 305 N.J.Super. 274, certification denied 707 A.2d 152, 153 N.J. 49. Homicide ↻ 558

### Intent

Defendant may be convicted of **attempt** where his objective conduct, taken as a whole, corroborates requisite criminal intent. *U.S. v. Hsu*, E.D.Pa.1997, 982 F.Supp. 1022, 44 U.S.P.Q.2d 1646, reversed 155 F.3d 189, 177 A.L.R. Fed. 791, 47 U.S.P.Q.2d 1784. Criminal Law ↻ 44

**Attempt** must be purposive, and this element of purposive conduct requires an exploration of the actor's intent, not merely the possible consequences of his action. *State v. Perez*, N.J.Super.A.D.2002, 793 A.2d 89, 349 N.J.Super. 145, certification granted 803 A.2d 636, 174 N.J. 40, reversed 832 A.2d 303, 177 N.J. 540. Criminal Law ↻ 44

Culpability requirement for element of eluding requiring proof that defendant fled or **attempted** to elude, is "knowingly" as opposed to the "purposely" mental state required to convict on a criminal **attempt** charge. *State v. Mendez*, N.J.Super.A.D.2001, 785 A.2d 945, 345 N.J.Super. 498, certification granted 793 A.2d 718, 171 N.J. 340, affirmed 814 A.2d 1043, 175 N.J. 201. Obstructing Justice ↻ 119

To be guilty of an **attempt**, a defendant's conduct must be purposeful; in other words, it must be defendant's purpose to cause a particular result. *State ex rel. S.B.*, N.J.Super.A.D.2000, 755 A.2d 596, 333 N.J.Super. 236. Criminal Law ↻ 44

Conviction for **attempt** requires intent to commit crime and act constituting substantial step toward completion of the offense. *Com. v. McClintock*, Pa.Super.1994, 639 A.2d 1222, 433 Pa.Super. 83. Criminal Law ↻ 44

An **attempt** must be purposeful, and no lesser mental state will suffice, even if some other mental state could establish the underlying crime. *State v. Sette*, N.J.Super.A.D.1992, 611 A.2d 1129, 259 N.J.Super. 156, certification denied 617 A.2d 1219, 130 N.J. 597. Criminal Law ☞ 44

There cannot be an **attempt** to cause an unintended result. *State in Interest of J.L.W.*, N.J.Super.A.D.1989, 565 A.2d 1106, 236 N.J.Super. 336. Criminal Law ☞ 44

Imposition of sentence for arson endangering persons did not preclude, on double jeopardy grounds, imposition of sentences for **attempted** murders by setting the fire, where intent to start a fire, a necessary element of arson endangering persons, was not element of **attempted** first-degree murder and intent to kill, a necessary element of **attempted** first-degree murder, was not element of arson endangering persons. *Com. v. Williams*, Pa.1987, 522 A.2d 1095, 514 Pa. 124, certiorari denied 108 S.Ct. 2852, 487 U.S. 1208, 101 L.Ed.2d 889. Double Jeopardy ☞ 150(1)

Actor's belief in external circumstances, not true reality of the external circumstances, controls the necessary proof for **attempt** to commit the underlying substantive crime. *Com. v. Henley*, Pa.Super.1983, 459 A.2d 365, 312 Pa.Super. 564, affirmed 474 A.2d 1115, 504 Pa. 408. Criminal Law ☞ 44

Under bill of indictment charging defendant with **attempted** burglary with intent to commit theft, Commonwealth was required to prove an intent to enter premises and an intent to commit theft after entry. *Com. v. Morgan*, Pa.Super.1979, 401 A.2d 1182, 265 Pa.Super. 225. Burglary ☞ 3

Where the defendant was charged with **attempted** burglary with the intent to commit theft, Commonwealth was required to prove both the intent to enter the house and the intent to commit theft after entering. *Com. v. Madison*, Pa.Super.1979, 397 A.2d 818, 263 Pa.Super. 206. Burglary ☞ 29

### Impossibility of committing crime

Crimes Code abrogates the defenses of factual and legal impossibility to **attempt** crimes in clear, concise, and unambiguous language. *Com. v. Henley*, Pa.1984, 474 A.2d 1115, 504 Pa. 408. Criminal Law ☞ 44

If one forms intent to commit substantive crime, then proceeds to perform all acts necessary to commit the crime, and it is shown that completion of the substantive crime is impossible, the actor can still be culpable of **attempt** to commit the substantive crime. *Com. v. Henley*, Pa.1984, 474 A.2d 1115, 504 Pa. 408. Criminal Law ☞ 44

Defense of legal impossibility was not available to defendant in prosecution for **attempted** theft by unlawful taking or disposition. *Com. v. Henley*, Pa.1984, 474 A.2d 1115, 504 Pa. 408. Larceny ☞ 26

Statute providing that it shall not be a defense to a charge of **attempt** that it would have been impossible for the accused to commit the crime because of a misapprehension of the circumstances abolished both the defense of factual impossibility and the defense of legal impossibility. *Com. v. Henley*, Pa.Super.1983, 459 A.2d 365, 312 Pa.Super. 564, affirmed 474 A.2d 1115, 504 Pa. 408. Criminal Law ☞ 44

No matter what the extrinsic circumstances are, if defendant intends to commit a crime, he may be guilty of **attempt** even if the crime is impossible to complete or his actions do not constitute crime. *Com. v. Henley*, Pa.Super.1983, 459 A.2d 365, 312 Pa.Super. 564, affirmed 474 A.2d 1115, 504 Pa. 408. Criminal Law ☞ 44

### Merger

**Attempt** and conspiracy are inchoate aspects of contemplated and consummated crime, which gives rise to problems of merger where both **attempt** or conspiracy and consummated crime are both in indictment and in evidence. *State v. Malone*, N.J.Super.L.1993, 635 A.2d 596, 269 N.J.Super. 414. Conspiracy ↻ 37; Criminal Law ↻ 30

Even assuming aggravated assault is lesser included offense of **attempted** murder, if only aggravated assault is charged, it is considered in and of itself; no offense exists within which assault offense could be included or into which it may merge. *Com. v. Spells*, Pa.Super.1992, 612 A.2d 458, 417 Pa.Super. 233, appeal granted 631 A.2d 1006, 535 Pa. 633, appeal dismissed as improvidently granted 643 A.2d 1078, 537 Pa. 350. Criminal Law ↻ 30; Indictment And Information ↻ 191(.5)

Terroristic threats were separate and discrete offenses that did not merge with criminal **attempt**, indecent assault, indecent exposure, and simple assault in that threat was accomplished by act separate from acts used to establish actual assault. *Com. v. Whetstine*, Pa.Super.1985, 496 A.2d 777, 344 Pa.Super. 246, appeal denied. Criminal Law ↻ 30

Judgment of sentence for criminal conspiracy arising out of **attempted** rape would be vacated, in that such offenses were inchoate crimes arising out of same incident. *Com. v. Martin*, Pa.Super.1983, 462 A.2d 859, 316 Pa.Super. 190. Criminal Law ↻ 29(12)

Defendant was improperly convicted of both **attempted** rape and possessing an instrument of crime. *Com. v. Simpson*, Pa.Super.1983, 462 A.2d 821, 316 Pa.Super. 115. Criminal Law ↻ 29(12)

**Attempted** theft count should have merged with burglary conviction and, accordingly, defendant's conviction for **attempted** theft would be vacated. *Com. v. Gonzales*, Pa.Super.1982, 443 A.2d 301, 297 Pa.Super. 66. Criminal Law ↻ 31

Where, even though independent acts were found to support imposition of sentences for **attempted** murder and recklessly endangering, no independent acts could be found to support sentence imposed for crime of aggravated assault, defendant's conviction for aggravated assault merged with conviction for **attempted** murder for sentencing purposes. *Com. v. Miranda*, Pa.Super.1982, 442 A.2d 1133, 296 Pa.Super. 441. Criminal Law ↻ 30

Evidence that defendant produced gun and fired shot which severely injured both victims and, when questioned by one victim about his motive for shooting, defendant fired through window at other victim established that more than one act had taken place such that crimes of aggravated assault and **attempted** murder established by first shooting did not merge with crimes of recklessly endangering established by second shooting. *Com. v. Miranda*, Pa.Super.1982, 442 A.2d 1133, 296 Pa.Super. 441. Criminal Law ↻ 30

Where criminal conspiracy to commit burglary and subsequent **attempted** burglary constituted "conduct designed to culminate in the commission of the same crime," that is, burglary, defendant should not have been sentenced for both **attempt** and conspiracy, but should have only been sentenced for one or the other. *Com. v. Martinez*, Pa.Super.1981, 438 A.2d 984, 293 Pa.Super. 260. Sentencing And Punishment ↻ 520(3)

Conviction for aggravated assault where only one victim is involved will merge with conviction for criminal **attempt** to commit robbery for purposes of sentencing. *Com. v. Ayala*, Pa.1981, 424 A.2d 1260, 492 Pa. 418. Sentencing And Punishment ↻ 537

Conviction of an **attempt** to commit a certain crime and of the completed crime is improper, inasmuch as the lesser offense is a necessary ingredient of the greater offense and hence merges into it. *Com. v. Miller*, Pa.Super.1979, 410 A.2d 857, 269 Pa.Super. 589. Criminal Law ↻ 30

### Multiple crimes

Conviction of conspiracy and **attempt** to commit a crime is illegal when both these inchoate offenses relate to conduct designed to end in the same ultimate crime, such as burglary of a particular house. *Com. v. Hassine*, Pa.Super.1985, 490 A.2d 438, 340 Pa.Super. 318, appeal denied. Criminal Law ¶ 29(11)

Conspiracy to commit a crime is an “inchoate offense” within meaning of statute barring conviction of more than one offense defined by chapter 9 of the crimes code, relating to inchoate offenses, for conduct designed to commit or culminate in the commission of the same crime; so too is an **attempted** crime. In *Interest of Mark C.*, Pa.Super.1985, 489 A.2d 887, 340 Pa.Super. 151. Conspiracy ¶ 28(2)

### Voluntary intoxication

Voluntary intoxication is not defense to **attempted** first-degree murder. *Com. v. Williams*, Pa.Super.1999, 730 A.2d 507. Homicide ¶ 821

Under new Code of Criminal Justice, voluntary intoxication would be a complete defense to an **attempted** sexual assault, but not to a complete sexual assault. *State v. Stasio*, N.J.1979, 396 A.2d 1129, 78 N.J. 467. Criminal Law ¶ 53

### Involuntary intoxication

If defendant charged with murder and **attempted** murder could understand the nature and quality of his criminal acts, any involuntary intoxication defense would not apply, since he could not be “temporarily insane” under the M’Naghten standard as applicable to pathological and involuntary intoxication. *State v. Sette*, N.J.Super.A.D.1992, 611 A.2d 1129, 259 N.J.Super. 156, certification denied 617 A.2d 1219, 130 N.J. 597. Homicide ¶ 823

### Defenses, generally

Fact that accused misapprehended circumstances, thereby making it impossible for him to commit crime **attempted**, is not a defense to **attempt** crime. *Com. v. Lopez*, Pa.Super.1995, 654 A.2d 1150, 439 Pa.Super. 625. Criminal Law ¶ 44

### Lesser included offense

**Attempted** passion/provocation manslaughter is cognizable under the Code of Criminal Justice as lesser included offense of **attempted** murder. *State v. Robinson*, N.J.1994, 643 A.2d 591, 136 N.J. 476. Indictment And Information ¶ 189(8)

**Attempted** theft is an included offense of theft because it contemplates the conduct which goes beyond mere preparation to commit theft but stops short of contemplation. *State v. Carlos*, N.J.Super.A.D.1982, 455 A.2d 89, 187 N.J.Super. 406. Indictment And Information ¶ 190

Fact that there was no evidence at defendant's trial for **attempted** theft of automobile as to any contents of car susceptible to a theft would not preclude defendant's conviction for lesser included offense of **attempted** theft of contents of automobile. *Com. v. Farmer*, Pa.Super.1976, 368 A.2d 748, 244 Pa.Super. 334. Larceny ¶ 66

Indictment charging defendant with “**attempted** theft of an automobile” fairly put defendant on notice of charges against him so that he could have prepared adequate defense for lesser included offense of **attempted** theft of contents of automobile. *Com. v. Farmer*, Pa.Super.1976, 368 A.2d 748, 244 Pa.Super. 334. Indictment And Information ¶ 71.4(8)

### Indictment and information

**Attempt** is lesser included offense which need not be separately charged in indictment. State v. Mann, N.J.Super.A.D.1990, 583 A.2d 372, 244 N.J.Super. 622. Indictment And Information ☞ 190

Where each of three offenses for which defendant was tried arose from combined assault, robbery and rape or **attempted** rape, all occurred within approximately three-week period, during early morning hours, within three-mile radius, in all instances victims were attacked from behind by assailant who was black and wore leather gloves, and after each sexual assault, victim's purse was found to be missing and two purses were found in defendant's apartment, similarities provided distinctive and unusual modus operandi and evidence of each was admissible to show common plan and scheme or design which tended to identify perpetrator of all; thus, consolidation of informations was proper exercise of discretion. Com. v. Larkins, Pa.Super.1982, 449 A.2d 42, 302 Pa.Super. 528. Criminal Law ☞ 619

### Adequacy of counsel

In prosecution for burglary, robbery, **attempted** rape and aggravated assault, defendant was not denied effective assistance of counsel by counsel's failure to request lineup where victim's identification of defendant, based on solid foundations of prior familiarity and substantial opportunity to observe him during course of crime, had been positive and lineup would have served only to strengthen victim's identification. Com. v. Hook, Pa.Super.1982, 446 A.2d 290, 300 Pa.Super. 181. Criminal Law ☞ 1930

In prosecution for burglary, robbery, **attempted** rape and aggravated assault, defendant was not denied effective assistance of counsel by counsel's failure to pursue on direct appeal question of suggestive nature of pretrial identification by victim where, before she made identification at magistrate's office prior to preliminary hearing, victim was not aware that defendant would be present, and victim immediately and without hesitation recognized and identified defendant, and thus question was wholly lacking in arguable merit. Com. v. Hook, Pa.Super.1982, 446 A.2d 290, 300 Pa.Super. 181. Criminal Law ☞ 1969

In prosecution for burglary, robbery, aggravated assault and **attempted** rape, defendant was not denied effective assistance of counsel by counsel's failure to subpoena documents from unemployment office which would have shown that defendant was collecting his unemployment check on afternoon of day of assault where records at unemployment office did not establish particular time for defendant's visit and other testimony was utilized to demonstrate defendant's presence elsewhere then at scene of crime. Com. v. Hook, Pa.Super.1982, 446 A.2d 290, 300 Pa.Super. 181. Criminal Law ☞ 1905

In prosecution for **attempted** rape, defendant was not denied effective assistance of counsel by counsel's failure to challenge three jurors who had signed antirape petition which had been circulated in community shortly before defendant's trial where petition had been motivated by another crime, jurors did not disclose inability to view objectively guilt or innocence of person charged with such offense, and defendant indicated no opposition to allowing jurors to serve when counsel discussed potential conflict with him. Com. v. Hook, Pa.Super.1982, 446 A.2d 290, 300 Pa.Super. 181. Criminal Law ☞ 1901

### Admissibility of evidence

In prosecution on charge of criminal **attempt** to commit murder, admission of photograph depicting front seat of victim's vehicle, empty except for victim's hat, with small amount of blood on seat and on passenger door was not error. Com. v. Kaster, Pa.Super.1982, 446 A.2d 286, 300 Pa.Super. 174. Criminal Law ☞ 438(4)

Where evidence of defendant's prior convictions of burglary, larceny, and receiving stolen property was not relevant to Commonwealth's proof that defendant committed aggravated assault and **attempted** robbery, and there was no issue of retrospective effect of applicable case, error occurred in refusing to grant defendant's motion to sever trial on charge of former convict not to own firearm from trial on charges of **attempted** robbery and aggravated assault, and such error was not harmless, so that new trial on charges of **attempted** robbery and aggravated assault was required, since it could not be said beyond reasonable doubt that evidence of defendant's prior convictions did not prejudice defendant's insanity defense. *Com. v. Neely*, Pa.Super.1982, 444 A.2d 1199, 298 Pa.Super. 328. Criminal Law ¶ 620(6); Criminal Law ¶ 1166(6)

In prosecution for aggravated assault, criminal **attempt** to commit murder and conspiracy, evidence of one defendant's prior criminal arrest as result of an earlier incident was admissible to establish motive. *Com. v. Bracero*, Pa.Super.1982, 442 A.2d 813, 296 Pa.Super. 368. Criminal Law ¶ 371.3; Criminal Law ¶ 371.13

In prosecution for **attempted** theft by deception, tangible evidence, found in defendant's home, consisting of uniform jacket of type worn by security guards and uniform type hat, was admissible despite defendant's argument that possession of uniforms such as those worn by security guards was not a crime. *Com. v. Smith*, Pa.Super.1981, 434 A.2d 115, 290 Pa.Super. 33. Criminal Law ¶ 404.70

In proceeding in which defendant was convicted of criminal **attempt**, criminal conspiracy and terroristic threats, victim's testimony to effect that certain person, who had previously worked for victim's husband, was defendant's father was inadmissible hearsay evidence where victim did not have first hand knowledge that such person was defendant's father, but, rather, victim had assertedly learned of such relationship from somebody else. *Com. v. Poli*, Pa.Super.1979, 398 A.2d 718, 264 Pa.Super. 1. Criminal Law ¶ 419(1.5)

In prosecution for **attempted** homicide, carrying firearm without a license, recklessly endangering another person, and theft of an automobile, evidence concerning defendant's escape from prison and theft of weapon was relevant and admissible as part of history leading up to and natural development of grounds for which defendant was tried and to show motive for committing such crimes, and such evidence was also admissible in connection with charges involving carrying and using of a firearm since it demonstrated source and manner in which defendant acquired weapon. *Com. v. Detrie*, Pa.Super.1979, 397 A.2d 2, 263 Pa.Super. 75. Criminal Law ¶ 368.39; Criminal Law ¶ 368.41; Criminal Law ¶ 371.13

In prosecution for criminal **attempt** to escape from official detention, Commonwealth could properly show that accused was being held on a felony charge at time of the charged offense; accused was not prejudiced by such evidence, in view of instruction that it was to be considered for limited purpose of determining whether he was under official detention at the time in question. *Com. v. Markle*, Pa.Super.1976, 369 A.2d 317, 245 Pa.Super. 108. Criminal Law ¶ 368.24; Criminal Law ¶ 1169.5(3).

### Sufficiency of evidence

Evidence did not support conclusion that defendant's sexual penetration of victim was committed "during the commission, or **attempted** commission" of carjacking, and, thus, did not support conviction for first-degree aggravated assault; irrespective of whether defendant had formed the intention of taking vehicle before the sexual assault, he had not yet done so, nor had he taken any substantial step toward doing so, as driver remained in control of vehicle until after defendant and victim of sexual assault returned to vehicle. *State v. Drury*, N.J.Super.A.D.2006, 889 A.2d 1087, 382 N.J.Super. 469, certification granted in part 897 A.2d 1058, 186 N.J. 603, affirmed in part, reversed in part 919 A.2d 813, 190 N.J. 197, denial of post-conviction relief affirmed 2012 WL 1205862, certification denied 54 A.3d 810, 212 N.J. 431. Sex Offenses ¶ 259



Evidence was sufficient to support determination that juvenile committed third degree **attempted** theft of an automobile; eye-witness testimony established that juvenile and a co-conspirator entered a van which had unlocked doors, that co-conspirator tampered with the steering wheel once inside the van, and that juvenile and co-conspirator **attempted** to gain entry into other vehicles. In re J.D., Pa.Super.2002, 798 A.2d 210. Infants ⚡ 2640(1)

Evidence that defendant was **attempting** to enter commercial establishment after business hours permitted finding of **attempt** to commit theft therein, and fact that he did not flee upon being discovered did not preclude such inference. Com. v. Von Aczel, Pa.Super.1981, 441 A.2d 750, 295 Pa.Super. 242. Burglary ⚡ 41(3)

Evidence that uniformed police officer observed defendant, from approximately 20 feet, approach man sleeping on bench and **attempt** to remove his wristwatch was sufficient to sustain conviction of criminal **attempt**, theft. Com. v. Lewis, Pa.Super.1981, 438 A.2d 985, 293 Pa.Super. 263. Larceny ⚡ 66

Evidence was sufficient to sustain defendant's convictions for **attempted** rape and indecent exposure, notwithstanding that there was an alleged inconsistency between victim's trial and preliminary hearing testimonies regarding the date on which defendant exposed himself. Com. v. King, Pa.Super.1981, 434 A.2d 1294, 290 Pa.Super. 563. Obscenity ⚡ 210(3); Sex Offenses ⚡ 282

Evidence that defendant was seen standing some ten feet away from premises looking toward them, that he walked away from scene shortly thereafter, that protective screen of window had been pried off and placed against retaining wall and that window pane had been broken failed to sustain conviction for **attempt** to commit burglary. Com. v. Smith, Pa.Super.1979, 399 A.2d 788, 264 Pa.Super. 303. Burglary ⚡ 41(10)

Under evidence, jury could find that defendant entered enclosed yard behind pharmacy and tampered with door leading to interior of building and thereby performed act constituting substantial step toward commission of crime of burglary, and evidence was thus sufficient to sustain conviction for **attempted** burglary. Com. v. Corbin, Pa.Super.1977, 380 A.2d 897, 251 Pa.Super. 512. Burglary ⚡ 41(10)

### Expert witness

Defendant's therapist could be qualified as expert witness on retrial for **attempted** murder, aggravated assault, and related charges, even though therapist was not a medical doctor and did not hold doctorate degree, as extent of academic training went to weight not qualification, where therapist was licensed as psychologist for 14 years, held master's degree in psychology, and was experienced therapist and therapy supervisor. State v. Hyde, N.J.Super.A.D.1996, 678 A.2d 717, 292 N.J.Super. 159. Criminal Law ⚡ 479

### Instructions

In order to convict a person of **attempted** murder, an intent to kill must be shown, and defendant who was charged with **attempted** murder was entitled to jury instruction to that effect; failure to give such an instruction required reversal of defendant's conviction of **attempted** murder. Com. v. Griffin, Pa.Super.1983, 456 A.2d 171, 310 Pa.Super. 39. Homicide ⚡ 558; Homicide ⚡ 1404

Error in refusing to instruct jury on doctrine that "mere presence" at scene of a crime, without some further evidence of involvement, is insufficient to support a conviction for **attempted** burglary was harmless as jury's conviction of defendant on charge of possession of an instrument of a crime demonstrated that it did not believe defendant's testimony. Com. v. Morgan, Pa.Super.1979, 401 A.2d 1182, 265 Pa.Super. 225. Criminal Law ⚡ 1173.2(2)

In prosecution for simple and aggravated assault, assault by prisoner and **attempted** murder based on stabbing of fellow inmate by defendant while in exercise yard of county prison, trial court did not err in refusing to specifically instruct jury that prison guards who testified for Commonwealth were "interested witnesses" whose testimony should have been carefully scrutinized, where, viewing charge in its entirety, it was apparent that jury was afforded comprehensive and adequate instruction concerning credibility of witnesses. *Com. v. Reese*, Pa.Super.1975, 352 A.2d 143, 237 Pa.Super. 326, Criminal Law ¶ 822(14)

#### Speedy trial

In prosecution for **attempted** burglary, criminal trespass and conspiracy, defendant's request for appointment of new counsel on the day trial was scheduled to commence, the 179th day under speedy trial rule, (Pa.R.Crim.P., Rule 1100, 42 Pa.C.S.A.), was properly denied. *Com. v. Jones*, Pa.Super.1982, 444 A.2d 729, 298 Pa.Super. 199. Criminal Law ¶ 1828(1)

In prosecution for **attempted** murder, speedy trial rule (Pa.R.Crim.P., Rule 1100, 42 Pa.C.S.A.) requiring trial to commence within 180 days after filing of complaint was not violated even though trial did not commence until 260 days following filing of complaint where 108 days of delay were chargeable to defendant in that during that time defendant's whereabouts were unknown and due diligence was utilized in **attempting** to locate and apprehend him. *Com. v. Miranda*, Pa.Super.1982, 442 A.2d 1133, 296 Pa.Super. 441. Criminal Law ¶ 577.11(2)

#### Sentence and punishment

Where all of defendant's conduct relevant to prosecution was designed to culminate in death of his wife, his conviction of three inchoate offenses of **attempted** homicide, conspiracy, and solicitation was improper, and judgments of sentence for such inchoate crimes were properly remanded for further proceeding and resentencing. *Com. v. Todt*, Pa.Super.1983, 464 A.2d 1226, 318 Pa.Super. 55. Criminal Law ¶ 29(14)

Where facts that went to establish defendant's commission of **attempted** murder were exactly same as those which proved defendant guilty of aggravated assault and reckless endangering of another person, latter two offenses merged with **attempted** murder conviction for sentencing purposes, and trial court properly imposed no separate sentences for them. *Com. v. Ford*, Pa.Super.1983, 461 A.2d 1281, 315 Pa.Super. 281. Criminal Law ¶ 30; Sentencing And Punishment ¶ 529

Defendant's convictions for all three inchoate crimes of **attempted** murder, criminal conspiracy, and possession of instrument of crime were improper, where such offenses were all perpetrated with one objective in mind, i.e., **attempted** killing of victim, and thus, in light of imposition of consecutive sentences on such crimes and presence of offenses of equal grading, proper appellate action was to vacate and remand, leaving it to sentencing court to decide which one of inchoate convictions to let stand, sentence to be entered in accordance thereto. *Com. v. Ford*, Pa.Super.1983, 461 A.2d 1281, 315 Pa.Super. 281. Criminal Law ¶ 29(14)

Where defendant was found guilty by jury of criminal conspiracy, criminal **attempt**, and possession of instrument of crime, trial judge could properly convict defendant of one inchoate crime by imposing judgment of sentence for **attempted** burglary and was not required to sentence defendant for possession of instrument of crime or arrest judgment on the other two charges of which defendant was found guilty. *Com. v. Maguire*, Pa.Super.1982, 452 A.2d 1047, 307 Pa.Super. 80. Criminal Law ¶ 29(11); Criminal Law ¶ 971(1); Sentencing And Punishment ¶ 523

**§ 5.01. Criminal Attempt., Model Penal Code § 5.01**

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Conviction for **attempted** burglary and also for possessing instrument of crime being improper, reviewing court had option either to remand for resentencing or to amend sentence directly, and where sentence for possession obviously did not affect sentence for **attempted** burglary court would not remand but would merely vacate sentence imposed for possession of instrument of crime as lesser offense. Com. v. Von Aczel, Pa.Super.1981, 441 A.2d 750, 295 Pa.Super. 242. Criminal Law 1187

Defendant's sentences for **attempted** rape, indecent assault, simple assault, and unlawful restraint would be vacated where defendant's conviction for recklessly endangering another person was reversed and it was not certain that that conviction did not influence court in severity of sentences it imposed. Com. v. Moody, Pa.Super.1982, 441 A.2d 371, 295 Pa.Super. 106, Criminal Law 1181.5(1)

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