CHAPTER SEVEN: ATTEMPT, CONSPIRACY, AND SOLICITATION

ATTEMPT

Anyone who, with intent to commit a crime, takes a substantial step toward committing the crime may be guilty of attempt to commit a crime. Merely thinking about committing a crime is not a crime; even preparation for a crime is not a substantial step. For example, if someone buys a gun with intent to kill another person, the act of buying is mere preparation. However, going to a person's house after buying a gun with intent to kill the person may be a substantial step that is enough to charge a person with attempting to commit a crime.

LAW OF ATTEMPT IN ILLINOIS
(720) Criminal Code of 1961
Article 8. Solicitation, Conspiracy and Attempt

(720 ILCS 5/8-4) (from Ch. 38, par. 8-4)

Sec. 8-4. Attempt.

(a) Elements of the Offense.

A person commits an attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial step toward the commission of that offense.

(b) Impossibility.

It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(c) Sentence.

A person convicted of an attempt may be fined or imprisoned or both not to exceed the maximum provided for the offense attempted but, except for an attempt to commit the offense defined in Section 33A-2 of this Act,

(1) the sentence for attempt to commit first degree murder is the sentence for a Class X felony, except that

(A) an attempt to commit first degree murder when at least one of the aggravating factors specified in paragraphs (1), (2) and (12) of subsection (b) of Section 9-1 is present is a Class X felony for which the sentence shall be a term of imprisonment of not less than 20 years and not more than 80 years;

(B) an attempt to commit first degree murder while armed with a firearm is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court;

(C) an attempt to commit first degree murder during which the person personally discharged a firearm is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court;

(D) an attempt to commit first degree murder during which the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

(2) the sentence for attempt to commit a Class X felony is the sentence for a Class 1 felony;

(3) the sentence for attempt to commit a Class 1

felony is the sentence for a Class 2 felony;
(4) the sentence for attempt to commit a Class 2 felony is the sentence for a Class 3 felony; and
(5) the sentence for attempt to commit any felony other than those specified in subsections (1), (2), (3) and (4) hereof is the sentence for a Class A misdemeanor.
(Source: P.A. 91-404, eff. 1-1-00; 91-696, eff. 4-13-00.)

CASE STUDY

Gwendolyn Whipple was living with Theresa Conway and Conway's three children in an apartment in Chicago. Conway and Whipple previously had met defendant through Conway's boyfriend, Mark Aytchan; Conway knew defendant only as "Keith." Whipple was nine months pregnant at the time of the crimes. Between 11:15 and 11:30 p.m. on July 6, 1982, the two women heard a knock at their door. The visitor told them it was "Keith." Conway later identified defendant as the person they let into the apartment.

Defendant offered the women some marijuana, and the three of them shared a marijuana cigarette. He told them that Aytchan had asked him to watch over them while Aytchan was in Cook County jail awaiting trial for burglary. Conway accused defendant of lying because she had recently talked to Aytchan, and he did not mention telling this to defendant. Defendant became angry and pushed the sharp tip of his umbrella at Conway's left jaw. Conway pushed the umbrella away and ran across the room to grab a knife. Defendant pulled out a gun. Conway said she thought the gun was only a toy. Defendant showed them the bullets in the gun, so she dropped the knife.

Defendant demanded that the two women lie side by side, face down on a bed. One of Conway's children came to check out the source of the noise that had awakened him. Defendant pointed the gun at the boy's forehead. Conway approached defendant and urged him to shoot her instead of her son. Defendant ordered Conway to tell her son to go back to bed and told her to lie down next to Whipple.

Defendant walked behind Conway and undressed her from the waist down. He had sexual intercourse with her while he pointed the gun at Whipple's head. Defendant undressed Whipple from the waist down and had sexual intercourse with her. Next, defendant threatened to kill them if they both did not perform oral sex on him, so first Conway and then Whipple complied. Afterward, defendant sat on the window ledge next to the bed. He pointed the gun at each of them while saying, "I'm going to kill you." He fired several shots.

Conway received gunshot injuries to her right mandible, the right side of her neck, and her right arm. Whipple received five gunshot wounds, including two to her left shoulder, two to the left side of her forehead, and one to her head. When Conway looked up, defendant had fled. She noticed Whipple's injuries, so she ran to get help. She went to the nearby apartment of Gus and Marquita Wilson. Gus Wilson testified that there was an urgent knock at the door around 1 a.m. Wilson opened the door, and a bloody Conway told him that she and Whipple had been shot. Wilson asked who had shot them, and she answered, "Keith."

Wilson went to Conway's apartment. He discovered that Conway's three children were uninjured. He then checked Whipple, but he was unable to find a pulse. He called for help. The paramedic who arrived at the scene also was unable to find any vital signs for Whipple or for her unborn baby. He testified that in his opinion both Whipple and her fetus were dead when he arrived.

Conway was taken to St. Bernard's Hospital.

About an hour later, two detectives from the Chicago police department interviewed Conway. Conway described the perpetrator and told them his name was Keith. She said that her boyfriend, Mark Aytchan, knew more about Keith, and Aytchan was currently in Cook County jail. An hour later, the police questioned Aytchan, and he told them that Conway must be referring to Keith Shum, the defendant. He gave them Shum's address.

The police went to this address, and defendant's aunt, Bernice Shum, answered the door. The detectives found defendant undressed and asleep on a couch. After he was awakened, they identified themselves as policemen, told him why they were there, and gave him *Miranda* warnings. Defendant denied involvement in the incident. The detectives took defendant to Conway's hospital room, and she immediately identified him as the person who had raped and shot her and Gwendolyn Whipple. Police reports disclosed that a "rape kit" or "Vitullo kit" was obtained from Conway. Throughout questioning by police officers and an assistant State's Attorney, defendant denied his involvement in the crimes.

Defendant was charged by indictment on July 7, 1982, with murder, attempted murder**,** two counts of rape, two counts of deviate sexual assault, two counts of unlawful restraint, aggravated battery, armed violence, and feticide.

CONSPIRACY

A conspiracy is an agreement between two or more persons to commit a crime. For example, if three people conspire to commit murder, at least one of them takes action to further the conspiracy, and the murder actually occurs, they all can be charged with both conspiracy and murder. Even if a conspirator backs out of the conspiracy, but the other conspirators commit the crime, all conspirators may be criminally liable if the acts were reasonably foreseeable.

LAW OF CONSPIRACY IN ILLINOIS
(720) Criminal Code of 1961
Article 8. Solicitation, Conspiracy and Attempt

(720 ILCS 5/8-2) (from Ch. 38, par. 8-2)

Sec. 8-2. Conspiracy.

(a) Elements of the offense. A person commits conspiracy when, with intent that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement is alleged and proved to have been committed by him or by a co-conspirator.

(b) Co-conspirators.

It shall not be a defense to conspiracy that the person or persons with whom the accused is alleged to have conspired:

(1) Has not been prosecuted or convicted, or

(2) Has been convicted of a different offense, or

(3) Is not amenable to justice, or

(4) Has been acquitted, or

(5) Lacked the capacity to commit an offense.

(c) Sentence.

A person convicted of conspiracy may be fined or imprisoned or both not to exceed the maximum provided for the offense which is the object of the conspiracy, except that if the object is an offense prohibited by Sections 11-15, 11-16, 11-17,

11-19, 24-1(a)(1), 24-1(a)(7), 28-1, 28-3 and 28-4 of the "Criminal Code of 1961", approved July 28, 1961, as amended, or prohibited by Sections 404 or 406 (b) of the "Illinois Controlled Substances Act", enacted by the 77th General Assembly, or an inchoate offense related to any of the aforesaid principal offenses, the person convicted may be sentenced for a Class 3 felony however, conspiracy to commit treason, first degree murder, aggravated kidnapping, aggravated criminal sexual assault, or predatory criminal sexual assault of a child is a Class 1 felony, and conspiracy to commit any offense other than those specified in this subsection, and other than those set forth in Sections 401, 402, or 407 of the Illinois Controlled Substances Act, shall not be sentenced in excess of a Class 4 felony.
(Source: P.A. 94-184, eff. 7-12-05.)

(720 ILCS 5/8-2.1)

Sec. 8-2.1. Conspiracy against civil rights.

(a) Offense. A person commits conspiracy against civil rights when, without legal justification, he or she, with the intent to interfere with the free exercise of any right or privilege secured by the Constitution of the United States, the Constitution of the State of Illinois, the laws of the United States, or the laws of the State of Illinois by any person or persons, agrees with another to inflict physical harm on any other person or the threat of physical harm on any other person and either the accused or a co-conspirator has committed any act in furtherance of that agreement.

(b) Co-conspirators. It shall not be a defense to conspiracy against civil rights that a person or persons with whom the accused is alleged to have conspired:

(1) has not been prosecuted or convicted; or

(2) has been convicted of a different offense; or

(3) is not amenable to justice; or

(4) has been acquitted; or

(5) lacked the capacity to commit an offense.

(c) Sentence. Conspiracy against civil rights is a Class 4 felony for a first offense and a Class 2 felony for a second or subsequent offense.
(Source: P.A. 92-830, eff. 1-1-03.)

CASE STUDY

In the early morning of December 20, 2000, 16-year-old J.S. entered the home of James Hopp in Nauvoo and hit James on the head with a fireplace poker while he slept. James was seriously injured by the blow but has since recovered. J.S. and another juvenile, M.H., were arrested near the Hopp residence by a police officer who was responding to the scene. At the time of the attack, defendant Tiffany Hopp, James' estranged wife, was in California with the couple's four children, visiting Tiffany's mother. After defendant returned from California, she went to the Hancock County sheriff's department to be interviewed about the attack on her husband. She gave two statements regarding her involvement in the attack, the second of which was videotaped. She was then arrested and later charged by information with conspiracy to commit first degree murder, and with attempted first degree murder and home invasion on a theory of accountability for the actions of J.S. and M.H.

J.S. and M.H. testified against defendant at trial. Both testified that J.S. was defendant's boyfriend. J.S. was 16 years old at the time of the attack on James, while defendant was 26. Both

J.S. and M.H. testified about numerous conversations they had with defendant in the weeks prior to the attack. During those conversations the three discussed various plans to kill James, including using a shotgun, burning down the house, and cutting James' throat. Defendant criticized these plans. For example, she opined that a shotgun would make too much noise. The trio also discussed fabricating alibis by, for example, going to a movie theater in another town, obtaining tickets, and then slipping out of the theater to go to Nauvoo and kill James.

J.S. testified that "we finalized the plan" shortly before defendant and the children left for California. The final plan was for J.S. and M.H. to go to the Hopp house early in the morning during the weekend. J.S. testified that it was decided to use the poker at his suggestion, and that he had the idea because he "saw it on TV a lot." M.H. testified that his role was to accompany J.S. to make sure he would go through with it. Both testified that M.H. was to receive a car for his involvement while defendant would get custody of the four children, the house, and possibly proceeds from insurance on James' life.

The State played defendant's videotaped statement for the jury. In it she maintained that she discussed killing James with J.S. and M.H. only so she could talk the boys out of it by pointing out flaws in their plans. She also claimed she was afraid J.S. would leave her if she told him not to kill James. Defendant also introduced a letter that J.S. wrote to James after the attack in which J.S. stated that defendant "didn't plan anything, she didn't talk me into anything, if anyone deserves her charges it's."

A police officer who was present when defendant gave both statements testified that defendant was generally more "accountable" in the untaped statement. The officer testified that in the untaped statement defendant admitted that when she sent a message to J.S. via the internet stating that he had one more day, she meant that he had one more day left in which to kill James. In the taped statement she claimed that she meant J.S. had one more day to be without her, but admitted she did not correct him when she realized he understood it to mean that he had one more day to kill James. A second officer testified that while he was transporting defendant to court the day after her arrest she asked him why she was charged with solicitation to commit murder. Before he could answer, defendant stated, "We committed a conspiracy to kill [James] but we didn't do a solicitation to kill [James]." J.S. testified that when he wrote to James that defendant did not plan anything, the statement was not accurate. J.S. testified further that defendant did not come up with any of the ideas about how to kill James.

SOLICITATION

In the United States, solicitation is a crime; it is an inchoate offense that consists of a person inciting, counseling, advising, urging, or commanding another to commit a crime with the specific intent that the person solicited commits the crime.

LAW OF SOLICIATION IN ILLINOIS
(720) Criminal Code of 1961
Article 8. Solicitation, Conspiracy and Attempt

(720 ILCS 5/8-1) (from Ch. 38, par. 8-1)

Sec. 8-1. Solicitation. (a) Elements of the offense. A person commits solicitation when, with intent that an offense be committed, other than first degree murder, he commands, encourages or requests another to commit that offense.

(b) Penalty.

A person convicted of solicitation may be fined or imprisoned or both not to

exceed the maximum provided for the offense solicited: Provided, however, the penalty shall not exceed the corresponding maximum limit provided by subparagraph (c) of Section 8-4 of this Act, as heretofore and hereafter amended.
(Source: P.A. 85-1030.)

(720 ILCS 5/8-1.1) (from Ch. 38, par. 8-1.1)
Sec. 8-1.1. Solicitation of Murder.
(a) A person commits solicitation of murder when, with the intent that the offense of first degree murder be committed, he commands, encourages or requests another to commit that offense.
(b) Penalty. Solicitation of murder is a Class X felony and a person convicted of solicitation of murder shall be sentenced to a term of imprisonment for a period of not less than 15 years and not more than 30 years, except that in cases where the person solicited was a person under the age of 17 years, the person convicted of solicitation of murder shall be sentenced to a term of imprisonment for a period of not less than 20 years and not more than 60 years.
(Source: P.A. 89-688, eff. 6-1-97; 89-689, eff. 12-31-96.)

(720 ILCS 5/8-1.2) (from Ch. 38, par. 8-1.2)
Sec. 8-1.2. Solicitation of Murder for Hire. (a) A person commits solicitation of murder for hire when, with the intent that the offense of first degree murder be committed, he procures another to commit that offense pursuant to any contract, agreement, understanding, command or request for money or anything of value.
(b) Penalty. Solicitation of murder for hire is a Class X felony and a person convicted of solicitation of murder for hire shall be sentenced to a term of imprisonment of not less than 20 years and not more than 40 years.
(Source: P.A. 85-1003; 85-1030; 85-1440.)

CASE STUDY

People v. Terrell **No. 5-02-367** Wilkins became acquainted with the defendant while the defendant was dating Wilkins' stepdaughter, Jewel Cooper. In August and September 2001, when the events leading to the charges against the defendant took place, Wilkins, his wife, and three of his children from a prior marriage were temporarily residing with Cooper in her home. Both Wilkins and the defendant met the intended victim, Leslie Harp, when Wilkins' son, Edward Kampmon, brought her to Cooper's home after befriending her at a Hardee's restaurant. Kampmon is mentally disabled, and it appeared to Wilkins that Harp was also mentally disabled. Cooper and the defendant had argued that day. The defendant began talking to Harp and later asked Wilkins to drive him and Harp to rural property Wilkins owned in Sawyerville, Illinois, where the two spent the night in an abandoned car. Wilkins returned to the property the following morning to drive Harp and the defendant home. After they dropped Harp off at her home, the defendant confided to Wilkins that he had a sexual relationship with Harp and asked Wilkins not to tell Cooper about it.

Approximately three to four weeks later, Harp returned to Cooper's home and informed Wilkins and his wife, Linda, that she was pregnant by the defendant. Linda Wilkins told Cooper that Harp

claimed to be pregnant with the defendant's child, and Cooper confronted the defendant about it. He denied having been involved with Harp. Sometime thereafter, however, the defendant confided to Wilkins that he planned to kill Harp in order to prevent Cooper from discovering his relationship with her.

Initially, the defendant told Wilkins that he intended to ask his sister to kick Harp in the stomach to kill the baby and then he intended to get her drunk and give her capsule pills filled with boric acid. He intended to kill her at Wilkins' Sawyerville property and dump her body in a well. Because the defendant has no car or driver's license, he asked Wilkins to drive him and Harp to the property. Wilkins told the defendant that he would help him, but instead he informed the police of his conversation with the defendant.

The defendant later informed Wilkins that he had found a different location in which to kill Harp, a location that he thought would be more appropriate. Although he did not tell Wilkins where the location was, he again asked him to assist by picking up Harp in his car. Wilkins again contacted the police and reported what had transpired. He agreed to record any further discussions with the defendant.

On September 26, 2001, Wilkins visited the defendant at his home, where the defendant showed him a hatchet, some rope, and a steel bar. He told Wilkins that he intended to hit Harp in the head with the steel bar and use the hatchet to either cut her throat or chop her up. At the defendant's request, Wilkins drove him to buy a shovel and then drove him to an abandoned house outside of Litchfield, Illinois, where the defendant intended to kill Harp. Inside the house, the defendant used the shovel to dig a grave for Harp in the dirt floor. The shovel broke and Wilkins drove the defendant to Wal-Mart to buy another shovel and then drove him back to the house, where he dug a second hole in which he planned to bury Harp. The defendant asked Wilkins to drive him and Harp to the site two days later. He did not ask Wilkins to be present during the murder or assist in any way beyond driving him and Harp to the abandoned house.

The following day, the State charged the defendant by information with one count of attempt (first-degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2000)) and one count of solicitation of murder (720 ILCS 5/8-1.1(a) (West 2000)). On February 22, 2002, the defendant was tried in a bench trial. The court took the matter under advisement and, on March 1, 2002, found the defendant not guilty of attempt (first-degree murder) but found him guilty of solicitation of murder. On April 19, 2002, the trial court sentenced the defendant to 18 years in the Department of Corrections. On May 17, 2002, the court denied the defendant's motion to reduce his sentence.

QUESTIONS FOR REVIEW

1. Which of the following is necessary to convict an individual with an attempt to commit a crime?
A. Preparation
B. The intent to commit a crime
C. Thinking about committing a crime
D. All of the above

Answer: B

2. True or False? It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

Answer: True

3. _____ is an inchoate offense that consists of a person inciting, counseling, advising, urging, or commanding another to commit a crime with the specific intent that the person requested commits the crime.
A. Attempt
B. Conspiracy
C. Solicitation
D. Pandering

Answer: C

4. _____ is an agreement between two or more persons to commit a crime.
A. Attempt
B. Conspiracy
C. Solicitation
D. Pandering

Answer: B

5. True or False? A person may be convicted of conspiracy to commit an offense without an act in furtherance of such agreement is alleged and without proof that the act is to have been committed by him or by a co-conspirator.

Answer: False

WEB RESOURCES

- http://www.state.il.us/court/Opinions/AppellateCourt/2003/5thDistrict/June/Html/5020367.htm
- http://en.wikipedia.org
- http://web.lexis-nexis.com
- http://www.weblocator.com/attorney/il/law/felonmisdem.html#100