

### **Attempted murder**

This file contains three directions

- 1, Attempted murder - only intent in issue;
- 2, Attempted murder - self defence with s18 as an alternative;
- 3, Attempted murder – with Alibi and Turnbull directions and s18 as alternative.

### **Attempted murder (1)(only intent)**

Someone is guilty of *murder* if he unlawfully kills another person.

But in this case D\*\* is not charged with murder. He is charged with attempted murder.

Before you can convict him, you must be sure of two things: first that he intended to kill C\*\* and second, that, with that intention, he did something which was more than mere preparation for committing that offence.

Stabbing someone \*\*seven times with a screw driver, as D\*\* agrees he did is, on any view, more than mere preparation.

So the only issue for you to decide is what D\*\*intended at the time that he stabbed C\*\*. Did he intend to kill C\*\*?

You can only decide what his intention was by considering all the relevant circumstances and in particular what he did and what he said.

What he did or said before and after he stabbed D\*\* may help you decide that, but it is what was in his mind at the time that is crucial.

You must decide what was in his mind, not what was in C\*\*'s mind, but what she says about what D\*\* said and how he appeared, may be evidence of his intention.

The prosecution case is that D\*\*

D\*\*

He denies that he intended to kill her.

So, the key question for you to answer, having regard to all the evidence and the directions which I give you, is this

At the time when he stabbed her, did D\*\* intend to kill C\*\*?

If you are sure that the answer to this question is “yes”, he is guilty of Count 1. If the answer may be “no”, he is not guilty.

### **Attempted murder (2) (with self defence and s18 as an alternative)**

Someone is guilty of *murder* if he unlawfully kills another person.

But in this case D\*\* is not charged with murder. He is charged with attempted murder.

Before you can convict him of this count, you must be sure of two things: first that he intended to kill C\*\* and second, that, with that intention, he did something which was more than mere preparation for committing that offence.

Obviously stabbing someone with a knife, as the prosecution say D\*\* did, may be more than mere preparation.

So one of the most important issues for you to decide in relation to the count of attempted murder is what D\*\* intended. Did he intend to kill C\*\*?

You can only decide what his intention was by considering all the relevant circumstances and in particular what he did and what he said.

When considering what D\*\* intended, what matters is what was in his mind.

The prosecution case is that that this was an intentional and planned attack. They say that D\*\* went into his house and armed himself with a knife before attacking C\*\*. ... .. and that in view of this and all the surrounding circumstances you can infer that D\*\*'s intention was not just to do serious harm but to kill C\*\*.

D\*\* denies that the wounds were deliberately inflicted and says that C2\*\*, C\*\*'s brother, went into C\*\*'s house and came out with a baseball bat and a knife, and then handed the knife to C\*\*. ... .. D\*\* accepts that he caused the wounds, perhaps when they fell to the ground or perhaps when he was waving the knife about. So, his defence in this court is principally one of accident – denying that he intended to cause C\*\* any harm, let alone kill him.

However, when interviewed by the police, D\*\* gave a prepared statement which included the following “I waved it [the knife] at him to get him away and stabbed him out of fear.” This raises the question of self-defence.

### Self defence

What is the law concerning self defence?

A person who is attacked or believes that he or someone else is about to be attacked may use such force as is reasonably necessary to defend himself or that person. If that is the case he is acting in lawful self-defence, and is entitled to be found ‘Not Guilty’. It is for the prosecution to make you sure that the defendant was not acting in lawful self-defence. He does not have to prove anything.

A person only acts in lawful self-defence if in all the circumstances he believes that it is necessary for him to defend himself or another person and if the amount of force that he uses in doing so is reasonable. So, there are two main questions for you to answer:

1. Did the defendant honestly believe or may he honestly have believed that it was necessary to defend himself or his mother? A person who knows he does not need to resort to violence does not act in lawful self-defence. If you are sure that the defendant did not honestly believe that it was necessary to defend himself or \*\*\*his mother, then self-defence does not arise in this case. But if you decide that he was or may have been acting in that belief, you must consider the second question:

2. Taking the circumstances and the danger as the defendant honestly believed them to be, was the amount of force which he used reasonable? Force used in self-defence is unreasonable and unlawful if it is out of all proportion to the nature of the attack, or is in excess of what is really required of the defendant to defend himself.

A person who is defending himself or another cannot be expected in the heat of the moment to weigh precisely the exact amount of defensive action which is necessary. If you conclude that the defendant did no more than he honestly and instinctively

thought was necessary to defend himself or his mother, you may think that would be strong evidence that the amount of force used by him was reasonable. If you are sure that the force used by the defendant was unreasonable, he cannot have been acting in lawful self-defence; but if force used was or may have been reasonable, then he is not guilty.

As I have said, one of the most important questions for you to consider in relation to Count 1, is whether or not D\*\* intended to kill C\*\*. If he did not intend to kill him, he cannot be guilty of attempted murder.

However, he may be guilty of the alternative, lesser offence of wounding with intent to do him grievous bodily harm which is Count 2.

### Count 2 Wounding with intent to cause grievous bodily harm

This is an alternative to Count 1.

You cannot find D\*\* guilty of both counts 1 and 2 because they are alternatives.

### unlawfully and maliciously

This means without any legal excuse. Self defence may amount to a legal excuse. I have already directed you about self defence.

### Wounded

That simply means breaking the skin. Any cut is a wound. The injuries caused to the back of C\*\*'s neck and in the area of his ribs, described in the Admissions and which we have seen in the photographs, our exhibit \*\*, were wounds.

### With intent to do him grievous bodily harm

Grievous bodily harm means "really serious harm".

This is disputed by the defendant. He says that the injuries were caused by accident in the struggle. If that is so, he is not guilty of Count 2. Before you can find the defendant guilty of wounding with intent, you must be sure that at the time when the wounds were caused, D\*\* intended to cause really serious harm to C\*\*.

If you are sure that at the material time D\*\* recognised that serious harm would be virtually certain to result from his actions, then that is a fact from which you may find it easy to infer that he intended to do serious bodily harm.

As they are alternatives, I would suggest that you consider Counts 1 and 2 together. It may well be that the best starting point is to decide whether, as the prosecution say, D\*\* went into his mother's house and came out with the knife, or whether, as the defence say, C2\*\* went into his brother's house and came out with a knife and baseball bat.

So, after considering who brought out the knife, the key questions for you to answer in relation to Counts 1 and 2, having regard to all the evidence and the directions which I give you, are these

1. Did D\*\* honestly believe, or may he honestly have believed, that it was necessary to defend himself or his mother?

If you are sure that the answer to that question is no, you should move on to question 3 (ignoring question 2). If the answer may be yes, move on to question 2.

2. Taking the circumstances and the danger as D\*\* honestly believed them to be, was the amount of force he used reasonable?

If you are sure that the answer to that question is no, move on to question 3. If the answer may be yes, he is not guilty of Counts 1 and 2 and you do not have to consider questions 3 or 4.

3. Did D\*\* intend to kill C\*\*?

If you are sure the answer to this question is “yes”, he is guilty of Count 1, attempted murder, and you do not have to consider Count 2 or Question 4. However, if the answer may be no, you should consider question 4.

4. Did D\*\* intend to cause really serious harm to C\*\*?

If you are sure the answer is “yes”, the defendant is guilty of Count 2, wounding with intent.

If the answer may be “no”, he is not guilty of Count 2.

**Attempted murder (3) (Alibi, Turnbull, intent, s18 as alternative)**

Count 1 Attempted murder

Count 2 Wounding with intent

Count 1 alleges attempted murder.

Before you can convict D\*\* of this count, you must be sure of two things:

first that he intended to kill C\*\*;

and second, that, with that intention, he did something which was more than mere preparation for committing that offence.

Stabbing someone repeatedly with a knife, as the prosecution say D\*\* did, may be more than mere preparation.

C\*\* says that \*\*

D\*\* does not dispute that two men attacked C\*\*, but he denies that he was one of them. He says he was not there.

So, the first question that you must consider is whether or not you are sure that D\*\* played some part in the attack.

In part, D\*\*’s defence is one of alibi. He says that he was not at the scene of the crime when it was committed.

As the prosecution have to prove his guilt so that you are sure of it, he does not have to prove he was elsewhere at the time.

On the contrary, the prosecution must disprove the alibi.

However, even if you conclude that the alibi was false, that does not by itself entitle you to convict the defendant. It is a matter which you may take into account, but you should bear in mind that an alibi is sometimes invented to bolster a genuine defence.

D\*\* also says that this is a case of mistaken identity. He appears to accept that C\*\* is an honest witness – he has not accused him of making up his evidence – but he says that he is confused and mistaken.

You must be cautious when considering identification or recognition evidence because experience has shown that any witness who has identified a person can be mistaken even when the witness is honest and sure that he is right. Such a witness may seem convincing but may be wrong. This is true even though a witness knows a person well and says that he has recognised that person. The witness could still be mistaken.

You can only rely on the identification evidence if you are sure that it is accurate. You need to consider carefully all the circumstances in which D\*\* was identified during the video identification procedure.

You must ask yourselves:

- *For how long could C\*\* see the person he says was the defendant and, in particular, for how long could he see the person's face?*
- *How clear was C\*\*'s view of the person, considering the distance between them, the light, any objects or people getting in the way and any distractions?*
- *Had C\*\* ever seen D\*\* before the incident? If so, how often and in what circumstances?*
- *How long was it between the time of the incident and the time when C\*\* identified D\*\* to the police?*
- *Is there any significant difference between the description C\*\* gave of the person and D\*\*'s appearance?*

You should also think about whether there is any evidence which, if you accept it, might support the identification. In particular, the prosecution rely on the forensic evidence – \*\*\*

You will also have to look to see if there are any weaknesses in any of the identification evidence, or if there is any evidence which, if you accept it, might undermine the identification evidence.

The other important issue, if you are sure that D\*\* took part in the attack, is what he intended. Did he intend to kill C\*\*? Did he intend to cause really serious harm? D\*\*'s evidence is that he had no intent to harm him in any way.

You can only decide what his intention was by considering all the relevant circumstances and, in particular, what he did and what he said.

When considering what D\*\* intended, what matters is what was in his mind.

The prosecution case is that that this was an intentional and planned attack. They say that \*\*\*.

As I have said, D\*\*'s defence is, simply, that he was not there.

When you are considering the question of “intent”, what matters is what was in D\*\*'s mind. Although what the accomplice may have said and what C\*\* may have feared are both part of the general evidential scenario, what matters is D\*\*'s intention, not what was in the mind of others.

There is evidence that D\*\* had been drinking.

This raises two matters in relation to the charges of attempted murder and unlawful wounding with intent. First, the mere fact that a defendant's mind was affected by drink so that he acted in a way in which he would not have done had he been sober, does not help him at all, - it is not a defence - provided that the necessary intention was there. A drunken intent is still an intent.

Secondly, and subject to this, you should have regard to all the evidence, including that relating to drink, and draw such inferences as you think proper from the evidence. You should ask yourselves whether you feel sure that the defendant intended to kill C\*\* or cause him really serious harm.

If you are sure that D\*\* was one of the attackers, but are not sure that he intended to kill C\*\*, he cannot be guilty of attempted murder.

However, he may be guilty of the alternative, lesser offence of wounding with intent to do him grievous bodily harm which is Count 2.

### Count 2 Wounding with intent to cause grievous bodily harm

This is an alternative to Count 1.

You cannot find D\*\* guilty of both counts 1 and 2 because they are alternatives.

### unlawfully and maliciously

This means without any legal excuse. There is no suggestion of any legal excuse in this case so you do not have to consider those words.

### wounded

That simply means breaking the skin. Any cut is a wound. The injuries inflicted upon C\*\*, described in the Admissions, and which we have seen in the photographs, were wounds.

### with intent to do him grievous bodily harm

Grievous bodily harm means "really serious harm".

Before you can find the defendant guilty of wounding with intent, you must be sure that at the time when the wounds were caused, D\*\* intended to cause really serious harm to C\*\*.

If you are sure that at the material time D\*\* recognised that serious harm would be virtually certain to result from his actions, then that is a fact from which you may find it easy to infer that he intended to do serious bodily harm.

As they are alternatives, I would suggest that you consider Counts 1 and 2 together. The starting point is for you to decide whether, as the prosecution say, D\*\* took part in this attack, or whether, as he says, it was a case of mistaken identity. Then, if you are sure that he did take part in the attack, consider what, if any, intention he had.

So, the key questions for you to answer, having regard to all the evidence and the directions which I give you, are these

1. Did D\*\* take part in the attack upon C\*\*?

If you are not sure, he is not guilty of either count and you do not have to consider any further questions. If you are sure that the answer is “yes”, you are sure that he did take part in the attack, you should move on to question 2.

2. Did D\*\* intend to kill C\*\*?

If you are sure the answer to this question is “yes”, he is guilty of Count 1, attempted murder, and you do not have to consider Count 2 or question 3. However, if you are not sure, you should consider question 3.

3. Did D\*\* intend to cause really serious harm to C\*\*?

If you are sure the answer is “yes”, the defendant is guilty of Count 2, wounding with intent.

If you are not sure, he is not guilty of any offence.