

RULE 3.510 | DETERMINATION OF ATTEMPTS AND LESSER INCLUDED OFFENSES

On an indictment or information on which the defendant is to be tried for any offense the jury may convict the defendant of:

- (a) an attempt to commit the offense if such attempt is an offense and is supported by the evidence. The judge shall not instruct the jury if there is no evidence to support the attempt and the only evidence proves a completed offense; or
- (b) any offense that as a matter of law is a necessarily included offense or a lesser included offense of the offense charged in the indictment or information and is supported by the evidence. The judge shall not instruct on any lesser included offense as to which there is no evidence.

Committee Notes

1968 Adoption. Same as section 919.16, Florida Statutes. The standing committee on Florida court rules raised the question as to whether this rule is procedural or substantive and directed the subcommittee to call this fact to the attention of the supreme court.

1972 Amendment. Same as prior rule except that references to affidavit have been deleted.

