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APPENDIX A

COMMITTEE ON STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES
HONORABLE F. RAND WALLIS, CHAIR
REPORT 2019-02

7.3 FELONY MURDER — FIRST DEGREE

§ 782.04(1)(a), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of First Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

Give 2a, 2b, and/or 2c as applicable.

2. **a.** **While engaged in the commission of a[n]** (felony alleged)**, [**(defendant)**] [(**defendant's**) accomplice] caused the death of** (victim)**.**

b. **While engaged in the attempt to commit a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

c. **While escaping from the immediate scene after [committing] [attempting to commit] a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

Give 3a if defendant was the person who actually killed the deceased.

3. **a.** (Defendant) **was the person who actually killed** (victim)**.**

Give 3b if defendant was not the person who actually killed the deceased.

b. (Victim) **was killed by a person other than** (defendant)**; but both** (defendant) **and the person who killed** (victim) **were principals in the commission of** (crime alleged)**.**

In order to convict the defendant of First Degree Felony Murder, it is not necessary for the State to prove that the defendant had a premeditated design or intent to kill.

1. Define the felony alleged.

2. If ~~2b above is given~~applicable, immediately give the attempt

instruction (5.1).

3. *If ~~3b above is given~~applicable, immediately give the principal instruction (3.5(a)).*

4. *If the underlying felony is charged as a separate count, read, at an appropriate time, instruction 3.12(d)(Legally Interlocking Counts). Failure to do so may result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).*

Give if the defendant was a juvenile at the time of the crime alleged. § 775.082(1)(b), Fla. Stat. Williams v. State, 242 So. 3d 280 (Fla. 2018). If the jury were to find the defendant guilty of First Degree Premeditated Murder ~~in a case where no principals instruction is given~~, the question of whether the defendant intended to kill or attempted to kill would inhere in that verdict. Therefore, the finding below should be made only for cases involving First Degree Felony Murder where it is alleged in the charging document that the defendant actually killed, intended to kill, or attempted to kill the victim. A general verdict for First Degree Murder without a specific finding of premeditation would require the paragraph below to be given.

If you find (defendant) **guilty of First Degree Felony Murder, you must also determine whether the State proved beyond a reasonable doubt, that [he] [she] [actually killed] [intended to kill] [or] [attempted to kill]** (victim)**.**

Lesser Included Offenses

FIRST DEGREE ~~(~~FELONY~~)~~ MURDER — 782.04(1)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
	Second degree (depraved mind) murder	782.04(2)	7.4
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
	Second degree ~~(~~felony~~)~~ murder	782.04(3)	7.5
	Aggravated Manslaughter	782.07(2)	7.7(a)

	(Elderly Person/Disabled Adult)		
	Aggravated Manslaughter (Officer/Firefighter/ EMT/Paramedic)	782.07(4)	7.7(a)
	Third degree ~~(~~felony~~)~~ murder*	782.04(4)	7.6
	Aggravated battery	784.045	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

See Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

*In some cases, Third Degree Felony Murder may be a necessary lesser-included offense of First Degree Felony Murder. For example, Third Degree Felony Murder with Child Abuse as the underlying felony may be a necessarily lesser-included offense of First Degree Felony Murder if Aggravated Child Abuse is the underlying felony.

This instruction was adopted in 1981 and was amended in 1985, 1992 [603 So. 2d 1175], 2011 [53 So. 3d 1017], 2014 [146 So. 3d 1110], 2018 [236 So. 3d 282], ~~and~~ 2018 [259 So. 3d 754], and 2019.

7.5 FELONY MURDER — SECOND DEGREE

§ 782.04(3), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Second Degree Felony Murder, the State must prove the following four elements beyond a reasonable doubt:

1. (Victim) **is dead.**

2. (Defendant) **was not the person who actually killed** (victim)**, but** (defendant) **did commit or did knowingly aid, abet, counsel, hire, or otherwise procure the commission of a[n]** (felony alleged)**.**

Give 3a, 3b, and/or 3c as applicable.

3. **a.** (Victim's) **death was caused during and was a consequence of the commission of the** (felony alleged)**.**

b. (Victim's) **death was caused during and was a consequence of the attempted commission of the** (felony alleged)**.**

c. (Victim's) **death was caused during and was a consequence of the escape from the immediate scene of the [**(felony alleged)**] [attempt to commit the** (felony alleged)**].**

4. **The person who actually killed** (victim) **was not involved in the commission or the attempt to commit the** (crime alleged)**.**

1. Define the ~~crime~~felony alleged. ~~If Burglary, also define crime that was object of burglary~~.

2. If ~~3b above is given~~applicable, ~~also define "~~immediately give the attempt~~"~~ instruction (~~see~~ 5.1).

3. If the underlying felony is charged as a separate count, read instruction 3.12(d)(Legally Interlocking Counts). Failure to do so may result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Lesser Included Offenses

SECOND DEGREE ~~(~~FELONY~~)~~ MURDER — 782.04(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA.STAT.**	**INS. NO.**
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
	Aggravated Manslaughter (Elderly Person/Disabled Adult)	782.07(2)	7.7(a)
	Aggravated Manslaughter (Officer/Firefighter/ EMT/Paramedic)	782.07(4)	7.7(a)
	Third degree ~~(~~felony~~)~~ murder	782.04(4)	7.6

Comments

~~See~~*See* Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 2014 [146 So. 3d 1110], ~~and~~ 2018 [236 So. 3d 282], and 2019.

7.6 FELONY MURDER — THIRD DEGREE

§ 782.04(4), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Third Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

Give 2a, 2b, and/or 2c as applicable.

2. **a.** **While engaged in the commission of a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

b. **While engaged in the attempt to commit a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice~~)~~] caused the death of** (victim)**.**

c. **While escaping from the immediate scene after [committing] [attempting to commit] a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

Give 3a if defendant was the person who actually killed the deceased.

3. **a.** (Defendant) **was the person who actually killed** (victim)**.**

Give 3b if defendant was not the person who actually killed the deceased.

b. (Victim) **was killed by a person other than** (defendant)**; but both** (defendant) **and the person who killed** (victim) **were principals in the commission of** (crime alleged)**.**

It is not necessary for the State to prove the killing was perpetrated with a design to effect death.

1. Define the ~~crime~~felony alleged.

2. If ~~2b above is given~~applicable, ~~also define~~immediately give the ~~"~~attempt~~"~~ instruction (~~see~~ 5.1).

3. If ~~3b is given~~applicable, immediately give principal instruction (3.5(a)).

4. If the underlying felony is charged as a separate count, read instruction 3.12(d)(Legally Interlocking Counts). Failure to do so may

result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Lesser Included Offenses

THIRD DEGREE ~~(~~FELONY~~)~~ MURDER — 782.04(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Manslaughter		782.07	7.7
	Felony Battery	784.041(1)	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

~~See~~*See* Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

This instruction was adopted in 1981 and amended in 1992 [603 So. 2d 1775], 1994 [639 So. 2d 602], 2014 [146 So. 3d 1110], ~~and~~ 2018 [236 So. 3d 282], and 2019.