

Florida Jury Instructions

7.2 MURDER—FIRST DEGREE

§ 782.04(1)(a), Fla. Stat.

When there will be instructions on both premeditated and felony murder, the following explanatory paragraph should be read to the jury.

There are two ways in which a person may be convicted of first degree murder. One is known as premeditated murder and the other is known as felony murder.

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

1. (Victim) is dead.
2. The death was caused by the criminal act of (defendant).
3. There was a premeditated killing of (victim).

Definitions.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

“Killing with premeditation” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Transferred intent. Give if applicable.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

Lesser Included Offenses

FIRST DEGREE (PREMEDITATED) 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
	Second degree (felony) murder	782.04(3)	7.5
	Third degree (felony) murder	782.04(4)	7.6
	Vehicular homicide	782.071	7.9
	Aggravated assault	784.021	8.2
	Aggravated battery	784.045	8.4
	Assault	784.011	8.1
	Battery	784.03	8.3
	Felony battery	784.041	8.5
	Culpable negligence	784.05(2)	8.9
	Culpable negligence	784.05(1)	8.9
	Attempted second degree murder	782.04(2) & 777.04	6.4
	Attempted voluntary manslaughter	782.07 & 777.04	6.6

7.4 MURDER—SECOND DEGREE

§ 782.04(2), Fla.Stat.

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

- 1. (Victim) is dead.**
- 2. The death was caused by the criminal act of (defendant).**
- 3. There was an unlawful killing of (victim) by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.**

Definitions.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is “imminently dangerous to another and demonstrating a depraved mind” if it is an act or series of acts that:

- 1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and**

2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

Lesser Included Offenses

SECOND DEGREE (DEPRAVED MIND) MURDER — 782.04(2)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Manslaughter		782.07	7.7
	Third degree (felony) murder	782.04(4)	7.6
	Vehicular homicide	782.071	7.9
	(Nonhomicide lessers) Attempt	777.04(1)	5.1
	Culpable negligence	784.05(2)	8.9
	Culpable negligence	784.05(1)	8.9
	Felony battery	784.041	8.5
	Aggravated battery	784.045	8.4
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

7.7 MANSLAUGHTER

§ 782.07, Fla. Stat.

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. (Victim) is dead.

Give 2a, 2b, or 2c depending upon allegations and proof.

2.
 - a. (Defendant) **intentionally committed an act or acts that caused the death of** (victim).
 - b. (Defendant) **intentionally procured an act that caused the death of** (victim).
 - c. **The death of** (victim) **was caused by the culpable negligence of** (defendant).

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide:

Negligence:

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

Justifiable Homicide:

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing. § 782.02, Fla. Stat.

Excusable Homicide:

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

- 1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or**
- 2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or**
- 3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.**

§ 782.03, Fla. Stat.

Give only if 2a alleged and proved.

In order to convict of manslaughter by act, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable and which caused death.

Give only if 2b alleged and proved.

To “procure” means to persuade, induce, prevail upon or cause a person to do something.

Give only if 2c alleged and proved.

I will now define “culpable negligence” for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to

consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

Lesser Included Offenses

MANSLAUGHTER - 782.07			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Vehicular homicide	782.071	7.9
	Vessel homicide	782.072	7.9
	(Nonhomicide lessers) Attempt	777.04(1)	5.1
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Culpable negligence	784.05	8.9

Category One (Necessarily Included Lessers)

1. Offenses necessarily included in the offense charged, which will include some lesser degrees of offenses.

Category Two (Not Necessarily Included Lessers)

2. Offenses which may or may not be included in the offense charged, depending on the accusatory pleading and the evidence, which will include all attempts and some lesser degrees of offenses.