7.01
Definition Of First Degree Murder

A person commits the offense of first degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another];

[or]

[4] he [(is attempting to commit) (is committing)] the offense of ____.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1 (West 2013).

This instruction applies to cases tried under P.A. 84-1450, which abolishes the offense of murder and replaces it with the offense of first degree murder.

Give Instruction 6.05, defining the offense of attempt following the definition of the forcible felony, when the basis for an instruction on felony murder is an alleged attempt to commit a forcible felony. However, no attempt issues instruction should be given unless the defendant also had been charged with an attempt offense.

When the prosecution is for an inchoate offense (i.e., attempt first degree murder, solicitation to commit first degree murder, conspiracy to commit first degree murder), do not give paragraphs [2], [3], or [4]. In addition, modify the murder definition in paragraph [1] in attempt first degree murder cases to require that the defendant had the intent to kill another. *See People v. Harris*, 72 Ill.2d 16, 377 N.E.2d 28 (1978).

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 720. *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

When paragraph [4] is given, insert in the blank the applicable forcible felony from those

listed in 720 ILCS 5/2-8 (except second degree murder). Follow this instruction with the instruction defining that forcible felony.

The Committee has elected to put the phrase "or another" in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this might cause confusion.

In *People v. Ehlert*, 274 Ill.App.3d 1026, 1038, 654 N.E.2d 705 (1st Dist. 1995), the appellate court held that when some evidence showed that the victim (defendant's newborn child) may have died either shortly before birth or in the birth process, the court should instruct the jury that to find the defendant guilty, the jury must find beyond a reasonable doubt that the victim was born alive. In *Ehlert*, the appellate court proposed the following instruction:

"To sustain the charge of first degree murder, the State must prove the following propositions:

First: That the baby, Jane Doe, was born alive; and

Second: That after the live birth the defendant performed the acts which caused the death of the baby, Jane Doe; and

Third: That when the defendant did so, she intended to kill or do great bodily harm to the baby, Jane Doe, or She [sic] knew that her acts created a strong probability of death or great bodily harm to the baby, Jane Doe."

Ehlert, 274 Ill.App.3d at 1038.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Sets 27.01, 27.04A, 27.04B, 27.05, and 27.06.