7.02B
Issues In First Degree Murder (When Second Degree Murder Is Not Also An Issue)

Use For Cases Where The Offense Is Alleged To Have Occurred After June 30, 2021.

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

First Proposition: That the defendant performed the acts which caused the death of ____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to ____.

[or]

[2] he knew that his acts would cause death to ____.

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to ____.

[or]

[4] he, acting [(alone) (with one or more participants)], [(committed) (attempted to commit)] the offense of _____, and [(in the course of) (in furtherance of) (in flight from)] this offense, [(he) (another participant)] caused the death of a person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-1 (West 2021), as amended by P.A. 101-0652, effective July 1, 2021.

Give Instruction 7.01B.

When using paragraph [4] alleging for felony murder, give Instruction 7.15B.

Use Instruction 7.02B to set forth the issues in first degree murder only when the court is not also instructing on the lesser offense of second degree murder. When the court is also instructing on second degree murder, instead of using a separate issues instruction for first degree murder, give the combined issues Instruction 7.04 or 7.06.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24-25.00.

Insert the name of the victim and the name of the felony (see Committee Note to Instruction 7.01B) in the appropriate blanks. Modify this instruction to fit the transferred intent situation. See *People v. Forrest*, 133 Ill.App.2d 70, 272 N.E.2d 813 (1st Dist. 1971).

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do not give separate issues instructions for each of the different ways first degree murder can be charged under Sections 9-1(a)(1) through (a)(3). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill.App.3d 887, 620 N.E.2d 506 (4th Dist. 1993).

When defendant is charged with the murder of a newborn, and evidence exists that the baby may have been stillborn, a jury must find beyond a reasonable doubt that the baby was born alive. *People v. Ehlert*, 274 Ill.App.3d 1026, 1038, 654 N.E.2d 705 (1st Dist. 1995). The *Ehlert* court recommended that this finding be included as the first proposition in the issues instructions, proposing the following modifications to Instruction 7.02:

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 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 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.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.