7.01X
Explanation To Jury Of The Reason For Designating One Category Of First Degree Murder As (Type A) And Another Category Of First Degree Murder As (Type B)

The terms "(Type A)" and "(Type B)" that I use in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

Pursuant to 720 ILCS 5/9-2(a), as amended by P.A. 84-1450, effective July 1, 1987, a conviction of second degree murder cannot be based upon a charge of first degree murder under 720 ILCS 5/9-1(a)(3) (felony murder). Accordingly, when both kinds of first degree murder are charged, one kind under Section 9-1(a)(3) (felony murder) and the other kind under Section 9-1(a)(1) or 9-1(a)(2) ("knowing or intentional murder"), and when the court is going to instruct the jury on the lesser offense of second degree murder, Instruction 7.02 should be used for the first degree murder count under Section 9-1(a)(3) and either Instruction 7.04 or 7.06 should be used for the other first degree murder counts upon which the second degree murder instruction is based.

The Committee suggests using the designations (Type A) and (Type B) to distinguish between these two categories of first degree murder. The purpose of this instruction is to explain to the jury why these designations are being used.

The felony murder doctrine, embodied in 720 ILCS 5/9-1(a)(3), is almost never the sole basis for a charge in this State of first degree murder. Instead, the prosecution typically alleges "knowing or intentional murder" under Section 9-1(a)(1) or 9-1(a)(2) when charging first degree murder, and the prosecution adds to those charges a first degree murder count based on the felony murder doctrine if such a count may be supported by the evidence.

Accordingly, the Committee believes that there is no need for this instruction unless the jury is going to be instructed on second degree murder. Since the jury may be instructed on second degree murder as a lesser offense *only* of "knowing or intentional murder" (9-1(a)(1) or 9-1(a)(2)) and not of felony murder (9-1(a)(3)), the court must distinguish in its instructions between these two different categories of first degree murder.

For a further discussion of this subject, see the Committee Notes to Instructions 7.02X, 7.04, and 7.06; see also Sample Instruction 27.05 for an example of the utilization of this instruction.

The Committee recommends that this instruction be read to the jury immediately after the court has read to the jury whichever instruction from the 2.01 series the court found applicable. Failure to use this instruction has been held to be reversible error. *People v. Alvine*, 173 Ill.2d 273, 671 N.E.2d 713 (1996).

For an example of the use of this instruction, see Sample Set 27.05.