7.02X
Explanation To Jury That It May Not Find Defendant Guilty Of Felony Murder And Not Guilty Of Underlying Felony

To sustain the charge of first degree murder (Type B), the State must prove that when the defendant performed the acts which caused the death of ____, the defendant was committing the offense of ____. Accordingly, you may find the defendant guilty of first degree murder (Type B) only if you also find the defendant guilty of ____.

If you find the defendant not guilty of ____, then you must find the defendant not guilty of first degree murder (Type B).

Committee Note

Instruction and Committee Note Approved January 30, 2015

This instruction should be used to avoid legally inconsistent verdicts that could arise when the jury is to be instructed on first degree murder under Instruction 7.02 and the *sole* basis for conviction is the felony murder doctrine.

When the felony murder doctrine is the sole basis for conviction, only paragraph [4] of the Second Proposition of Instruction 7.02 should be used.

Insert in the first blank the name of the alleged victim. Insert in the following blanks the name of the underlying felony as used in Instruction 7.02.

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