

7.1 INTRODUCTION TO HOMICIDE

Read in all murder and manslaughter cases.

(Defendant) **is accused of** (crime(s) charged) **in Count[s]** (insert the number of the relevant count(s)).

Give degrees as applicable.

First Degree Murder includes the lesser crimes of Second Degree, Murder, [Third Degree Murder,] and Manslaughter, all of which are unlawful. However, a killing that was excusable or that was committed by the justifiable use of deadly force is lawful.

If you find (victim) was killed by (defendant), you will then consider the circumstances surrounding the killing in deciding if the killing was (crime charged) or was First Degree Murder or Second Degree Murder, [or Third Degree Murder,] or Manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force.

JUSTIFIABLE HOMICIDE

§ 782.02, Fla. Stat.

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.

EXCUSABLE HOMICIDE

§ 782.03, Fla. Stat.

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.**

A “dangerous weapon” is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a “dangerous weapon” if it was used in a manner likely to cause death or great bodily harm.

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

I now instruct you on the circumstances that must be proved before (defendant) may be found guilty of (crime charged) or any lesser included crime.

Comments

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a dangerous weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an “object.”

This instruction was amended in 1990 [573 So. 2d 306], 1992 [603 So. 2d 1175], 1994 [639 So. 2d 602], on April 3, 2020, and on July 29, 2022.