

7.2 MURDER — FIRST DEGREE

§ 782.04(1)(a), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

When there will be instructions on both premeditated and first-degree felony murder, the following explanatory paragraph should be read to the jury.

There are two ways a person may commit First Degree Murder. One is known as First Degree Premeditated Murder and the other is known as First Degree Felony Murder.

If jury is to be instructed only on premeditated murder:

To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Victim) is dead.**
- 2. The death was caused by the criminal act of (defendant).**
- 3. There was a premeditated killing of (victim).**

Definitions.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

“Killing with premeditation” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Give only if there is evidence that the defendant acted in the heat of passion on legally adequate provocation.

An issue in this case is whether (defendant) did not act with a premeditated design to kill because [he] [she] acted in the heat of passion based on adequate provocation. In order to find that the defendant did not act with a premeditated design to kill because [he] [she] acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and**
- b. a reasonable person would have lost normal self-control and would have**

	been driven by a blind and unreasoning fury; and
c.	there was not a reasonable amount of time for a reasonable person to cool off; and
d.	a reasonable person would not have cooled off before committing the act that caused death; and
e.	(defendant) was, in fact, so provoked and did not cool off before [he] [she] committed the act that caused the death of (victim).

If you have a reasonable doubt about whether the defendant acted with a premeditated design to kill because [he] [she] acted in the heat of passion based on adequate provocation, you should not find [him] [her] guilty of First Degree Premeditated Murder.

Lesser Included Offenses

FIRST DEGREE (PREMEDITATED) MURDER — 782.04(1)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Second degree (depraved mind) murder		782.04(2)	7.4
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
	Second degree (felony) murder	782.04(3)	7.5
	Attempted felony murder	782.051(1)	6.3
	Attempted premeditated murder	782.04(1)	6.2
	Aggravated Manslaughter (Elderly Person/Disabled Adult)	782.07(2)	7.7(a)
	Aggravated Manslaughter (Officer/Firefighter/ EMT/Paramedic)	782.07(4)	7.7(a)
	Attempted second degree murder	782.04(2) & 777.04	6.4
	Attempted felony murder	782.051(2)	6.3
	Third degree (felony) murder	782.04(4)	7.6
	Vehicular homicide	782.071	7.9
	Attempted felony murder	782.051(3)	6.3(a)
	Aggravated battery	784.045	8.4
	Attempted Manslaughter by Act	782.07 & 777.04	6.6
	Felony Battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2

	Battery	784.03	8.3
	Culpable negligence	784.05(2)	8.9
	Culpable negligence	784.05(1)	8.9
	Assault	784.011	8.1

Comments

If the case involves transferred intent, insert Instruction 3.6(o).

See Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

This instruction was adopted in 1981 and was amended in October 1981, 2008 [994 So. 2d 1038], 2014 [137 So. 3d 995], and 2018.