

7.5 FELONY MURDER — SECOND DEGREE

§ 782.04(3), 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.

To prove the crime of Second Degree Felony Murder, the State must prove the following four elements beyond a reasonable doubt:

1. (Victim) **is dead.**
2. (Defendant) **was not the person who actually killed** (victim), **but** (defendant) **did commit or did knowingly aid, abet, counsel, hire, or otherwise procure the commission of a[n]** (felony alleged).

Give 3a, 3b, and/or 3c as applicable.

3.
 - a. (Victim's) **death was caused during and was a consequence of the commission of the** (felony alleged).
 - b. (Victim's) **death was caused during and was a consequence of the attempted commission of the** (felony alleged).
 - c. (Victim's) **death was caused during and was a consequence of the escape from the immediate scene of the [(felony alleged)] [attempt to commit the** (felony alleged)].
4. **The person who actually killed** (victim) **was not involved in the commission or the attempt to commit the** (crime alleged).

1. *Define the felony alleged..*
2. *If applicable, immediately give the attempt instruction (5.1).*
3. *If the underlying felony is charged as a separate count, read instruction 3.12(d)(Legally Interlocking Counts). Failure to do so may result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).*

Lesser Included Offenses

SECOND DEGREE FELONY MURDER — 782.04(3)			
CATEGORY ONE	CATEGORY TWO	FLA.STAT.	INS. NO.
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
		782.07(2)	7.7(a)

CATEGORY ONE	CATEGORY TWO	FLA.STAT.	INS. NO.
	Aggravated Manslaughter (Elderly Person/Disabled Adult)		
	Aggravated Manslaughter (Officer/Firefighter/EMT/Paramedic)	782.07(4)	7.7(a)
	Third degree felony murder	782.04(4)	7.6

Comments

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 amended in 1985 [477 So. 2d 985], 2014 [146 So. 3d 1110], 2018 [236 So. 3d 282], and 2019.