

7.6 FELONY MURDER — THIRD DEGREE

§ 782.04(4), 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 Third Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

Give 2a, 2b, and/or 2c as applicable.

2. a. **While engaged in the commission of a[n]** (felony alleged), [(defendant)] [(defendant's) **accomplice**] **caused the death of** (victim).
- b. **While engaged in the attempt to commit a[n]** (felony alleged), [(defendant)] [(defendant's) **accomplice**] **caused the death of** (victim).
- c. **While escaping from the immediate scene after [committing] [attempting to commit] a[n]** (felony alleged), [(defendant)] [(defendant's) **accomplice**] **caused the death of** (victim).

Give 3a if defendant was the person who actually killed the deceased.

3. a. (Defendant) **was the person who actually killed** (victim).

Give 3b if defendant was not the person who actually killed the deceased.

- b. (Victim) **was killed by a person other than** (defendant); **but both** (defendant) **and the person who killed** (victim) **were principals in the commission of** (crime alleged).

It is not necessary for the State to prove the killing was perpetrated with a design to effect death.

1. *Define the felony alleged.*
2. *If applicable, immediately give the attempt instruction (5.1).*
3. *If applicable, immediately give principal instruction (3.5(a)).*
4. *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

THIRD DEGREE FELONY MURDER — 782.04(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Manslaughter		782.07	7.7
	Felony Battery	784.041(1)	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

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 1992 [603 So. 2d 1775], 1994 [639 So. 2d 602], 2014 [146 So. 3d 1110], 2018 [236 So. 3d 282], and 2019.