

7.4 MURDER — SECOND DEGREE

§ 782.04(2), 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 Murder, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Victim) is dead.**
- 2. The death was caused by the act of (defendant).**
- 3. There was an unlawful killing of (victim) by an act imminently dangerous to another and demonstrating a depraved mind**

Porter v. State, 384 So. 3d 839 (Fla. 1d DCA 2024) and Kenyon v. State, 429 So. 3d 473 (Fla. 4th DCA 2025) support the bracketed language in #2 below in appropriate cases.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose. An act is “imminently dangerous to another and demonstrating a depraved mind” if it is an act or series of acts that:

a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another,

and

is done from ill will, hatred, spite, or an evil intent, and indicates an indifference to human life;

[or

denotes a wicked and corrupt disregard of the lives and safety of others].

To convict of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

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 have a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation. To find that the defendant did not have a depraved mind without regard for human life 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 had a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation, you should not find [him] [her] guilty of Second Degree Murder.

*Give if the defendant was a juvenile at the time of the crime alleged.
§ 775.082(3), Fla. Stat. Williams v. State, 242 So. 3d 280 (Fla. 2018). The finding below should be made only for cases involving Second Degree Murder where it is alleged in the charging document that the defendant actually killed, intended to kill, or attempted to kill the victim.*

If you find (defendant) guilty of Second Degree Murder, you must also determine whether the State proved beyond a reasonable doubt, that [he] [she] [actually killed] [intended to kill] [or] [attempted to kill] (victim).

Lesser Included Offenses

SECOND DEGREE MURDER — 782.04(2)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Manslaughter		782.07	7.7

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
	Aggravated Manslaughter (Elderly Person/Disabled Adult)	782.07(2)	7.7(a)
	Aggravated Manslaughter (Officer/Firefighter/EMT/Paramedic)	782.07(4)	7.7(a)
	Third degree (felony) murder	782.04(4)	7.6
	Death Caused by the Unlawful Distribution by a Person Less than 18 Years of Age of [Name of Enumerated Controlled Substance(s)]	782.04(5)(b)	7.3(b)
	Vehicular homicide	782.071	7.9
	Non-homicide lessers*		
	Attempted Second Degree Murder	777.04(1)	6.4
	Aggravated Battery	784.045	8.4
	Attempted Manslaughter	782.07 and 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

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

*Non-homicide lesser-included offenses do not have to be given if the parties agree causation is not in dispute and that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84], 2008 [994 So. 2d 1038], 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], 2018 [259 So. 3d 754], on September 12, 2025, and on June 12, 2026.