

MURDER IN THE FIRST DEGREE
(Intentional Murder - Two Additional Homicides
within 24 Months)
Penal Law § 125.27(1)(a)(xi)
(Committed on or after Sept. 1, 1995)
(Revised June 2005 and August 2018)¹

The (*specify*) count is Murder in the First Degree.

Under our law, a defendant is guilty of Murder in the First Degree when, with intent to cause the death of another person, the defendant causes the death of such person [*or of a third person*]², and when the defendant intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twenty-four (24) months when committed in a similar fashion³ [*or pursuant to a common scheme or plan*], and the defendant was more than eighteen (18) years old at the time of the commission of the crime.

The following terms used in that definition have a special meaning:

INTENT means conscious objective or purpose. Thus, a

¹ The June 2005 revision was for the purpose of inserting a definition for “criminal transaction.” See footnote four and attending text.

The August 2018 revision was for the purpose of inserting footnote three and revising the definition of “common scheme or plan.”

² If transferred intent applies and is in issue, see the definition of transferred intent in the Additional Charges at the end of this article.

³ “Similar fashion” is not defined by statute. And, the Court of Appeals has declined to “fashion a set of criteria to define the requirements of the statutory phrase,” stating that “[t]o do so . . . would ignore the relative nature and contextual considerations inherent in any analysis and application of the ‘similarity’ element.” *People v. Mateo*, 93 NY2d 327, 332-333 (1999). The Court has, however, explained that “[w]hat counts is the similarity of the conduct, not whether it occurred before or after the victim’s death. *People v. Shulman*, 6 NY3d 1, 16 (2005).

person acts with intent to cause the death of another person, or INTENTIONALLY causes the death of another person, when his or her conscious objective or purpose is to cause the death of that person.⁴

CRIMINAL TRANSACTION means conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.⁵

[COMMON SCHEME OR PLAN means a concurrence of common features such that the acts proved can naturally be explained as caused by a general plan of which each act is but a part.⁶

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following six elements:

1. That on or about (date), in the County of (County), with intent to cause the death of (primary victim), the defendant, (defendant's name), did so;
2. That on or about (date), in the State of New York, with intent to cause the death of (additional victim), the defendant, (defendant's name), did so;
3. That on or about (date), in the State of New York, with intent to cause the death of (second additional victim), the

³ See Penal Law § 15.05 (1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

⁵ CPL 40.10 (2). See *People v. Duggins*, 3 NY3d 522, 528-29 (2004).

⁶ *People v. Vails*, 43 NY2d 364, 369 (1977).

defendant, (defendant's name), did so;

4. That the three (3) deaths were caused in separate criminal transactions within a period of twenty-four (24) months of each other;
5. That the defendant caused each of the deaths in a similar fashion [*or pursuant to a common scheme or plan*]; and
6. That the defendant was more than eighteen (18) years old at the time of the commission of the crime.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

[NOTE: If either of the affirmative defenses -- Extreme Emotional Disturbance (§ 125.27(2)(a)) or Aiding a Suicide (§ 125.27(2)(b)) -- applies, omit the final two paragraphs of the above charge, and substitute one of the charges at the end of this article.]