

MURDER FIRST DEGREE
(Capital)
(Two Homicides During
Same Criminal Transaction)
PENAL LAW 125.27(1)(a)(viii)
(Committed on or after Sept. 1, 1995)
(Revised Oct. 25, 2001)

The _____ 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]¹ and, as part of the same criminal transaction, the defendant, with intent to cause serious physical injury to or the death of an additional person [*or* persons], causes the death of an additional person [*or* persons], provided that the victim was not a participant in the criminal transaction, and the defendant was more than eighteen (18) years old at the time of the commission of the crime.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "intent," "criminal transaction," and "serious physical injury."

INTENT means conscious objective or purpose. Thus, a person acts with intent to cause the death of another person when his or her conscious objective or purpose is to cause the death of that person. Similarly, a person acts with intent to cause serious physical injury to another person when his or her conscious objective or purpose is to cause serious physical injury to that person.²

¹If transferred intent applies and is in issue, see Additional Charges at the end of this article.

²See Penal Law § 15.05(1). For an expanded charge on intent, see General Charges, Culpable Mental States, Intent.

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.³

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death, or which causes death, or serious and protracted disfigurement, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁴

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 five elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), caused the deaths of (names of victims);
2. That the defendant did so with the intent to cause the death of (name of one victim) and the intent to cause either the death or serious physical injury of (name of other victim);
3. That the defendant caused both deaths during the same criminal transaction;
4. That neither victim was a participant in the criminal transaction; and

³ CPL 40.10(2). People v. Reed, 265 A.D.2d 56 (2nd Dept. 2000); People v. Mower, 280 A.D.2d 25 (3rd Dept. 2001), aff'd. on other grounds 97 N.Y.2d 239 (2002).

⁴ See Penal Law § 10.00(10).

5. That the defendant was more than eighteen (18) years old at the time of the commission of the crime.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Murder in the First Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Murder in the First Degree as charged in the _____ count.

[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.]