

MURDER FIRST DEGREE
(Capital)
(Intentional Murder - Two Additional
Homicides within 24 Months)
PENAL LAW 125.27(1)(a)(xi)
(Committed on or after Sept. 1, 1995)
Revised¹

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], 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 fashion [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.

Some of the terms [The term, intent,] 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 "common scheme or plan"].

INTENT means conscious objective or purpose. Thus, a 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.²

[NOTE: In a case of "transferred intent," add the following

¹ This charge was revised on June 3, 2005 by inserting a definition for "criminal transaction."

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

paragraph:

Under our law, it is not required that the person who died be the same person whose death was intended to be caused.]

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

[Crimes are committed pursuant to a COMMON SCHEME OR PLAN when they are committed pursuant to a plan, scheme, or design to engage in three (3) or more killings.]

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 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

³ CPL 40.10(2). See *People v. Duggins*, 3 N.Y.3d 522 (2004).

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.

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.]