

7.4 MURDER—SECOND DEGREE

§ 782.04(2), Fla.Stat.

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 criminal act of (defendant).
3. There was an unlawful killing of (victim) by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

Definitions.

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:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

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

Lesser Included Offenses

SECOND DEGREE (DEPRAVED MIND) MURDER — 782.04(2)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Manslaughter		782.07	7.7
	Third degree (felony) murder	782.04(4)	7.6
	Vehicular homicide	782.071	7.9
	(Nonhomicide lessers) Attempt	777.04(1)	5.1
	Culpable negligence	784.05(2)	8.9
	Culpable negligence	784.05(1)	8.9
	Felony battery	784.041	8.5
	Aggravated battery	784.045	8.4
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comment

This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84] and 2008 [994 So. 2d 1038].