

**7.6 FELONY MURDER — THIRD DEGREE**

§ 782.04(4), Fla.Stat.

To prove the crime of Third Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) is dead.

*Give 2a, 2b, or 2c as applicable.*

2. a. [The death occurred as a consequence of and while (defendant) was engaged in the commission of (crime alleged).]

b. [The death occurred as a consequence of and while (defendant) was attempting to commit (crime alleged).]

c. [The death occurred as a consequence of and while (defendant), or an accomplice, was escaping from the immediate scene of (crime alleged).]

*Give 3a if defendant actual perpetrator.*

3. a. [(Defendant) was the person who actually killed (victim).]

*Give 3b if defendant not actual perpetrator.*

b. [(Victim) was killed by a person other than (defendant); but both (defendant) and the person who killed (victim) were principals in the commission of (crime alleged).]

It is not necessary for the State to prove the killing was perpetrated with a design to effect death.

1. Define the crime alleged.

2. If 2b above is given, also define "attempt" (see 5.1).

3. If 3b is given, immediately give principal instruction (3.5(a)).

**Lesser Included Offenses**

<b>THIRD DEGREE (FELONY) MURDER — 782.04(4)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
None			
	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 1992 and 1994.