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# HOMICIDE

## MPJI-Cr 4:17.1 HOMICIDE--FIRST DEGREE PREMEDITATED MURDER AND SECOND DEGREE SPECIFIC INTENT MURDER (VOLUNTARY INTOXICATION GENERATED AND SECOND DEGREE DEPRAVED HEART MURDER AND INVOLUNTARY MANSLAUGHTER INSTRUCTED), BUT NO JUSTIFICATION OR MITIGATION GENERATED

The defendant D JOHNSON is charged with the crime of murder. This charge includes first degree murder and second degree murder.

# A

## FIRST DEGREE MURDER

First degree murder is the intentional killing of another person with willfulness, deliberation, and premeditation. In order to convict the defendant of first degree murder, the State must prove:

1. that the defendant caused the death of ; and
2. that the killing was willful, deliberate, and premeditated.

* Willful means that the defendant actually intended to kill .
* Deliberate means that the defendant was conscious of the intent to kill.
* Premeditated means that the defendant thought about the killing and that there was enough time before the killing, though it may only have been brief, for the defendant to consider the decision whether or not to kill and enough time to weigh the reasons for and against the choice. The premeditated intent to kill must be formed before the killing.

# B

## SECOND DEGREE MURDER

Second degree murder is the killing of another person with either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result. Second degree murder does not require premeditation or deliberation. In order to convict the defendant of second degree murder, the State must prove:

1. that the defendant caused the death of ; and
2. that the defendant engaged in the deadly conduct either with the intent to kill or with the intent to inflict such serious bodily harm that death would be the likely result.

# D

## DEPRAVED HEART MURDER

The defendant also is charged with second degree depraved heart murder. Second degree depraved heart murder is the killing of another person while acting with an extreme disregard for human life. Voluntary intoxication is not a defense to second degree depraved heart murder because that variety of murder does not require a specific intent. In order to convict the defendant of second degree depraved heart murder, the State must prove:

1. that the defendant caused the death of ;
2. that the defendant's conduct created a very high degree of risk to the life of ; and
3. that the defendant, conscious of such risk, acted with extreme disregard of the life-endangering consequences.

If the State proved, beyond a reasonable doubt, that the defendant committed second degree depraved heart murder, do not consider involuntary manslaughter. If, on the other hand, the State did not prove, beyond a reasonable doubt, that the defendant committed second degree depraved heart murder, then you should go on to consider involuntary manslaughter.

# E

## INVOLUNTARY MANSLAUGHTER--GROSSLY NEGLIGENT ACT

The defendant also is charged with the crime of involuntary manslaughter. Voluntary intoxication is not a defense to involuntary manslaughter because that crime does not require a specific intent. In order to convict the defendant of involuntary manslaughter, the State must prove:

1. that the defendant acted in a grossly negligent manner; and
2. that this grossly negligent conduct caused the death of .

“Grossly negligent” means that the defendant, while aware of the risk, acted in a manner that created a high degree of risk to, and showed a reckless disregard for, human life.

[If defendant was unaware of the risk due to self-induced intoxication, that unawareness is not a defense.]

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### Notes on Use

Use this instruction if the defendant is charged with first degree premeditated murder under MD. CODE ANN., CRIMINAL LAW I § 2-201 (2012 & Supp. 2018) (hereinafter CRIM. LAW I or II § \_\_\_ ), and/or second degree specific intent murder under CRIM. LAW I § 2-204, but only if (1) there is evidence of voluntary intoxication, and (2) there is no issue of justification or mitigation generated. If, in addition to murder, the defendant is charged with other specific intent crimes, use this instruction in conjunction with MPJI-Cr 5:08 (Voluntary Intoxication) and modify, as necessary, to enable the two instructions to work together.