

MURDER
(N.J.S.A. 2C:11-3a(1) and 3a(2))

The defendant is charged by indictment with the murder of (insert name of victim). Count _____ of the indictment reads as follows: **(Read indictment)**

A person is guilty of murder if he/she:

- (1) caused the victim's death or serious bodily injury that then resulted in the victim's death;¹ and
- (2) the defendant did so purposely or knowingly.

In order for you to find the defendant guilty of murder, the State is required to prove each of the following elements beyond a reasonable doubt:

- (1) that the defendant caused (**insert victim's name**) death or serious bodily injury that then resulted in (**insert victim's name**) death, and
- (2) that the defendant did so purposely or knowingly.

One element that the State must prove beyond a reasonable doubt is that the defendant acted purposely or knowingly.

A person acts purposely when it is the person's conscious object to cause death or serious bodily injury resulting in death.²

A person acts knowingly when the person is aware that it is practically certain that his/her conduct will cause death or serious bodily injury resulting in death.³

The nature of the purpose or knowledge with which the defendant acted toward (**insert victim's name**) is a question of fact for you the jury to decide. Purpose and knowledge are conditions of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his/her purpose was to cause death or serious bodily injury resulting in death; or that he/she knew that his/her conduct would cause

¹ Note that in State v. Gilliam, 224 N.J. Super. 759 (App. Div. 1988), the Court held that an actor must intend to cause death in order to be guilty of attempted murder. If the actor intends to cause serious bodily injury, then he cannot be guilty of attempted murder. Therefore, when this charge is combined with N.J.S.A. 2C:5-1 (Attempt) to charge attempted murder, it is necessary to omit all references to serious bodily injury resulting in death.

² N.J.S.A. 2C:2-2b (1).

³ N.J.S.A. 2C:2-2b (2).

MURDER
(N.J.S.A. 2C:11-3a(1) and 3a(2))

death or serious bodily injury resulting in death. It is within your power to find that proof of purpose or knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances. Such things as the place where the acts occurred, the weapon used, the location, number and nature of wounds inflicted, and all that was done or said by the defendant preceding, connected with, and immediately succeeding the events leading to the death of **(insert victim's name)** are among the circumstances to be considered.

Although the State must prove that the defendant acted either purposely or knowingly, the State is not required to prove a motive. If the State has proved the essential elements of the offense beyond a reasonable doubt, the defendant must be found guilty of that offense regardless of the defendant's motive or lack of a motive. If the State, however, has proved a motive, you may consider that insofar as it gives meaning to other circumstances.⁴ On the other hand, you may consider the absence of motive in weighing whether or not the defendant is guilty of the crime charged.

A homicide or a killing with a deadly weapon, such as (describe the deadly weapon used) in itself would permit you to draw an inference that the defendant's purpose was to take life or cause serious bodily injury resulting in death.⁵ A deadly weapon is any firearm or other weapon, device, instrument, material or substance, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.⁶ In your deliberations you may consider the weapon used and the manner and circumstances of the killing, and if you are satisfied beyond a reasonable doubt that the defendant (shot) (stabbed) and killed **(insert victim's name)** with a (gun) (knife) you may draw an inference from the weapon used, that is the (gun) (knife), and from the manner and circumstances of the killing, as to the defendant's purpose or knowledge.

The other element that the State must prove beyond a reasonable doubt is that the defendant caused **(insert victim's name)** death or serious bodily injury resulting in death.

As I previously advised you, in order to convict the defendant of murder, the State must prove beyond a reasonable doubt that the defendant either purposely or knowingly caused the

⁴ State v. Beard, 16 N.J. 50, 60, (1954).

⁵ State v. Martini, 131 N.J. 176, 269-74 (1993).

⁶ N.J.S.A. 2C:11-1c.

MURDER
(N.J.S.A. 2C:11-3a(1) and 3a(2))

victim's death or serious bodily injury resulting in death. In that regard, "serious bodily injury" means bodily injury that creates a substantial risk of death. A substantial risk of death exists where it is highly probable that the injury will result in death.⁷

In order for you to find the defendant guilty of purposeful serious bodily injury murder, the State must prove beyond a reasonable doubt that it was the defendant's conscious object to cause serious bodily injury that then resulted in the victim's death; that the defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result. In order for you to find the defendant guilty of knowing serious bodily injury murder, the State must prove beyond a reasonable doubt that the defendant was aware that it was practically certain that his/her conduct would cause serious bodily injury that then resulted in the victim's death; that the defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result.

**(If causal relationship between conduct and result is not an issue,
charge the following paragraph)**

Whether the killing is committed purposely or knowingly, causing death or serious bodily injury resulting in death must be within the design or contemplation of the defendant.

(If causal relationship between conduct and result is an issue, charge the following⁸)

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, the victim would not have died.

Second, **(insert victim's name)** death must have been within the design or contemplation of the defendant. If not, it must involve the same kind of injury or harm as that designed or contemplated, and must also not be too remote, too accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his/her offense. In other words, the State must prove beyond a reasonable doubt that **(insert victim's name)** death was not so unexpected or unusual that it would be unjust to find the defendant guilty of murder.⁹

[NOTE: In cases where Causation - Removal of Life Support is an issue, the jury

⁷ N.J.S.A. 2C:11-1b; State v. Cruz, 163 N.J. 403 (2000).

⁸ State v. Martin, 119 N.J. 2, 16-18 (1990).

⁹ State v. Martin, 119 N.J. at 33.

MURDER
(N.J.S.A. 2C:11-3a(1) and 3a(2))

should be instructed as follows:

You have heard testimony that on [date], **(insert victim's name)** was taken off life support and that he/she died at some point after this was done. Should you find beyond a reasonable doubt that **(insert victim's name)** died from medical complications that resulted from injuries caused by defendant's actions, the removal of life support, in this case (method of removal), is not an intervening cause that relieves defendant of any criminal liability for those actions.¹⁰ That is, if defendant's actions set in motion **(insert victim's name)** need for life support, without which death would result naturally, then the causal link between defendant's action and the death of **(insert victim's name)** was not broken by an unforeseen, extraordinary act when **(insert victim's name)** was removed from life support and then expired, unless there was an intervening volitional act of another.]¹¹

(Where the defendant and State offer contrasting factual theories of causation, each version should be summarized for the jury.¹²)

[CHARGE IN ALL CASES]

In order for you to find the defendant guilty of murder the State must first establish beyond a reasonable doubt that the defendant caused **(insert victim's name)** death or serious bodily injury resulting in death, either purposely or knowingly, as I have defined these terms for you. The State, however, is not required to prove a motive. If the State has proved the essential elements of the offense beyond a reasonable doubt, the defendant must be found guilty of that offense regardless of the defendant's motive or lack of a motive. If the State, however, has proved a motive, you may consider that insofar as it gives meaning to other circumstances.¹³ On the other hand, you may consider the absence of motive in weighing whether or not the defendant is guilty of the crime charged.

A homicide or a killing with a deadly weapon, such as (describe the deadly weapon used) in itself would permit you to draw an inference that the defendant's purpose was to take life or cause serious bodily injury resulting in death.¹⁴ A deadly weapon is any firearm or other weapon,

¹⁰ State v. Pelham, 176 N.J. 448, 455-456 and n. 2 (2003).

¹¹ Pelham, 176 N.J. at 467.

¹² State v. Martin, 119 N.J. at 18.

¹³ State v. Beard, 16 N.J. 50, 60 (1954).

¹⁴ State v. Martini, 131 N.J. 176, 269-74 (1993).

MURDER
(N.J.S.A. 2C:11-3a(1) and 3a(2))

device, instrument, material or substance, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.¹⁵ In your deliberations you may consider the weapon used and the manner and circumstances of the killing, and if you are satisfied beyond a reasonable doubt that the defendant (shot) (stabbed) and killed (**insert victim's name**) with a (gun) (knife) you may draw an inference from the weapon used, that is, the (gun) (knife), and from the manner and circumstances of the killing, as to the defendant's purpose or knowledge.

All jurors do not have to agree unanimously concerning which form of murder is present so long as all believe that it was one form of murder or the other. However, for a defendant to be guilty of murder, all jurors must agree that the defendant either knowingly or purposely caused the death or serious bodily injury resulting in the death of (**insert victim's name**).

If after a consideration of all the evidence you are convinced beyond a reasonable doubt that the defendant either purposely or knowingly caused (**insert victim's name**) death or serious bodily injury resulting in death, then your verdict must be guilty.

If, however, after a consideration of all the evidence you find that the State has failed to prove any element of the offense beyond a reasonable doubt, your verdict must be not guilty.

¹⁵ N.J.S.A. 2C:11-1c.