

IN THE SUPREME COURT OF ALABAMA
July 30, 2010

ORDER

IT IS ORDERED that Alabama Pattern Jury Instructions - Criminal for the guilt phase of capital proceedings for the capital offenses of Murder During Robbery in the First Degree (or Attempt Thereof) (Serious Physical Injury); Murder of Two or More Persons (Single Act); Murder of Two or More Persons (Pursuant to One Scheme or Course of Conduct); Murder of a Public Official; Murder Within 20 years of a Previous Murder Conviction; Murder of a Witness; Murder of a Victim Less Than 14 Years of Age; Murder by or through Deadly Weapon Used from Outside Dwelling upon a Victim Inside Dwelling; Murder by or through Deadly Weapon Used upon a Victim Inside a Vehicle; Murder by or through Deadly Weapon Used Within or from Vehicle, be amended to read in accordance with the appendix attached to this order.

IT IS FURTHER ORDERED that this amendment is effective immediately.

Cobb, C.J., and Lyons, Woodall, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 30th day of July, 2010

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

APPENDIX

Ala. Code 1975, § 13A-5-40(a)(2)
MURDER DURING ROBBERY IN THE FIRST DEGREE
(OR ATTEMPT THEREOF) (Serious Physical Injury)

The defendant is charged with capital murder. The law states that an intentional murder committed during robbery in the first degree is capital murder.

A person commits an intentional murder if he causes the death of another person and, in performing the act or acts that cause the death of that person, he intends to kill that person (or another person).

A person commits a robbery in the first degree if, in the course of committing or attempting to commit a theft, he uses force against the person of the owner or any person present with intent to overcome his physical resistance, or threatens the imminent use of force against the person of the owner (or any person present) with intent to compel acquiescence to the taking of or escaping with the property, and in doing so he causes serious physical injury to another.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder during robbery in the first degree:

- (1) That (name of the deceased) is dead;
- (2) That the defendant caused the death of (name of the deceased) by (state the alleged act, e.g., shooting) him;
- (3) That in committing the act(s) that caused the death of (name of the deceased), the defendant intended to kill the deceased or another person.
- (4) That the defendant committed or attempted to commit theft of (describe property taken);
- (5) That in the course of committing or attempting to commit the theft (or in the immediate flight after the attempt or commission), the defendant either used force, or threatened the imminent use of force against the person of (name of property owner or, if applicable, other person present), with the intent to overcome his physical resistance or physical

power to resist, or to compel acquiescence to the taking of (or escaping with) the property; and

(6) That the murder took place "during" the robbery.

A person commits a theft of property if he knowingly obtains or exerts unauthorized control over the property of another, with intent to deprive the owner of his property.

A person acts knowingly with respect to conduct or to a circumstance when he is aware that his conduct is of that nature or that the circumstance exists.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

Serious physical injury is physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss of the function of any bodily organ. Death, by definition, would constitute serious physical injury.

"During" means in the course of the commission of or in connection with (or in immediate flight from) the commission of the robbery.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder during robbery in the first degree, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder during robbery in the first degree, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the court should instruct on those offenses at this point.]

Use Notes

Theft by deception is not included in this charge. Deception simply does not correspond with a taking by force.

It is no defense to a charge of robbery in any degree that the taking was under a claim of right and thereby could not be a theft of property.

One version of robbery in the first degree includes an element that the defendant was armed with a deadly weapon or dangerous instrument. That element is unnecessary in a capital-murder prosecution because an alternative element is that the defendant caused serious physical injury to another person. If a robbery defendant causes serious physical injury, the defendant can be convicted of robbery in the first degree whether or not the defendant was armed. By definition, capital murder requires proof of serious physical injury in that the defendant must culpably participate in the death of the victim; otherwise, there is no capital murder. The death meets the requirements for serious physical injury, which supplants the need that the defendant be armed.

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

An accused is not guilty of capital murder during a robbery in the first degree when the intent to rob was formed only after the victim was killed. See Connolly v. State, 500 So. 2d 57 (Ala. Crim. App. 1985).

Ala. Code 1975, § 13A-5-40(a)(10)
MURDER OF TWO OR MORE PERSONS (Single Act)

The defendant is charged with capital murder. The law states that the intentional murder of two or more persons is capital murder.

A person commits intentional murder of two or more persons if he causes the death of two or more people and, in performing the act that cause the deaths of those people, he intends to kill each of those people.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of two or more persons:

(1) That (named of first deceased) is dead;

(2) That (name of second deceased) is dead;

(3) That the defendant (name of the defendant) caused the deaths of (name of the first deceased) and (name of the second deceased) by one act by (state the alleged act, e.g., shooting) them; and

(4) That in committing the act that caused the deaths of both (name of first deceased) and (name of second deceased) the defendant intended to kill the deceased or another person.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder of two or more persons, as charged, then you shall find the defendant guilty of capital murder.

If you find the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder of two or more persons, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the court should instruct on those offenses at this point.]

Use Notes

If more than two deceased are named in the indictment, the State must prove only that at least two of the named deceased, as opposed to all the named deceased, were murdered by the defendant's act.

For this charge to be applicable, a single act of the defendant must have caused the death of the victims. For example: arson in which two or more persons are killed; an explosion in which two or more persons are killed, etc.

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offenses. See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(10)
MURDER OF TWO OR MORE PERSONS
(Pursuant to One Scheme or Course of Conduct)

The defendant is charged with capital murder. The law states that the intentional murder of two or more persons is capital murder.

A person commits an intentional murder of two or more persons if, pursuant to one scheme or course of conduct, he causes the death of two or more people and, in performing the act(s) that cause the deaths of those people, he intends to kill each of those people.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of two or more persons:

- (1) That (name of first deceased) is dead;
- (2) That the defendant (name of the defendant) caused the death of (name of first deceased) by (state the alleged act, e.g., shooting) him;
- (3) That in committing the act(s) that caused the death of (name of first deceased) the defendant intended to kill the deceased or another person.
- (4) That (name of second deceased) is dead;
- (5) That the defendant caused the death of (name of second deceased) by (state the alleged act, e.g., shooting) him;
- (6) That in committing the act(s) that caused the death of (name of second deceased) the defendant intended to kill the deceased or another person; and
- (7) That the murder of (name of first deceased) and the murder (name of second deceased) were pursuant to one scheme or course of conduct.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder of two or more persons, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder of two or more persons, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the court should instruct on those offenses at this point.]

Use Notes

If more than two deceased are named in the indictment, the State must prove only that at least two of the named deceased, as opposed to all the named deceased, were murdered pursuant to the defendant's scheme or course of conduct.

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(11)
MURDER OF A PUBLIC OFFICIAL

The defendant is charged with capital murder. The law states that the intentional murder of a public official that stems from or is caused by or is related to that person's official position, act, or capacity is capital murder.

A person commits an intentional murder of a public official if he causes the death of [select as appropriate]:

- (1) a state public official,
- (2) a federal public official,
- (3) a former state public official, or
- (4) a former federal public official;

and in performing the act or acts that cause the death of that person, he intends to kill that person (or another person), and the murder stems from or is caused by or is related to that person's official position, act, or capacity.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of a public official:

(1) That (name of deceased) is dead;

(2) That the defendant (name of the defendant) caused the death of (name of deceased) by (state the alleged act, e.g., shooting) him;

(3) That in committing the act(s) that caused the death of (name of deceased) the defendant intended to kill the deceased or another person.

(4) That (name of deceased) was [use as appropriate]:

- (1) a state public official,
- (2) a federal public official,
- (3) a former state public official, or
- (4) a former federal public official

(specify position held);

(5) That the murder stems from or is caused by or is related to (name of deceased)'s official position, act, or capacity; and

(6) That the defendant knew that the victim was a public official.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

A person acts knowingly with respect to conduct or to a circumstance when he is aware that his conduct is of that nature or that the circumstance exists.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder of a public official, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder of a public official, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the court should instruct on those offenses at this point.]

Use Notes

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(13)
MURDER WITHIN 20 YEARS OF A
PREVIOUS MURDER CONVICTION

The defendant is charged with capital murder. The law states that an intentional murder committed within 20 years of a previous murder conviction is capital murder.

A person commits an intentional murder within 20 years of a previous murder conviction if he causes the death of another person and, in performing the act or acts which cause the death of that person, he intends to kill that person (or another person), and at the time of the intentional murder he had previously been convicted of another murder in the 20 years preceding the murder of the deceased in this case.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder within 20 years of a previous murder conviction:

- (1) That (name of deceased person) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased) by (state the alleged act, e.g., shooting) him;
- (3) That in committing the act(s) that caused the death of (name of deceased) the defendant intended to kill the deceased or another person; and
- (4) That the murder was committed within 20 years of a prior murder conviction of the defendant.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

"Prior murder conviction" includes murder in any degree as defined at the time and place of the prior conviction.

During the trial you heard evidence concerning whether the defendant had previously been convicted of a murder. The one and only reason you were permitted to hear that evidence is that one of the elements of the capital offense is a conviction of murder within the 20 years immediately preceding the murder(s) alleged in this case. This is the only reason

evidence about whether the defendant has previously been convicted of murder was admitted, and that is the only purpose for which you may consider it.

You are not to consider the evidence that the defendant may have been convicted of murder on a previous occasion as evidence that he did commit the alleged murder(s) with which he is charged in this case. The law of this state requires that when you are deciding whether the State has proved beyond a reasonable doubt that the defendant committed the alleged murder(s) charged in this case, you cannot consider any evidence that the defendant may have previously been convicted of another murder.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder within 20 years of a previous murder conviction, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder within 20 years of a previous murder conviction, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the court should instruct on those offenses at this point.]

Use Notes

In addition to the cautionary instruction on the use of the defendant's prior murder conviction that should be given as part of the oral charge, a similar cautionary instruction may also be given at the time evidence of that prior murder conviction is admitted during the trial.

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(14)
MURDER OF A WITNESS

The defendant is charged with capital murder. The law states that the intentional murder of a witness is capital murder.

A person commits an intentional murder of a witness if he causes the death of another person and, in performing the act or acts that cause the death of that person, he intends to kill that person, when that person is subpoenaed, or has been subpoenaed, to testify, or had testified, in any preliminary hearing, grand-jury proceeding, criminal trial or criminal proceeding of whatever nature, or civil trial or civil proceeding of whatever nature, in any municipal, state, or federal court, and the murder stems from, is caused by, or is related to the capacity or role of that person as a witness.

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of a witness:

- (1) That (name of deceased) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased) by (state the alleged act, e.g., shooting) him;
- (3) That in committing the act(s) that caused the death of (name of deceased) the defendant intended to kill the deceased or another person;
- (4) That (name of deceased) was subpoenaed, or had been subpoenaed, to testify, or had testified in any [use as appropriate] preliminary hearing, grand-jury proceeding, criminal trial or criminal proceeding of whatever nature, or civil trial or civil proceeding of whatever nature, in any municipal, state, or federal court;
- (5) That the murder stemmed from, was caused by, or was related to (name of deceased)'s role as a witness; and
- (6) That the defendant knew the deceased was a witness at the time.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

A person acts knowingly with respect to conduct or to a circumstance when he is aware that his conduct is of that nature or that the circumstance exists.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder of a witness, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder of a witness, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the court should instruct on those offenses at this point.]

Use Notes

See McGee v. State, 594 So. 2d 219 (Ala. Crim. App. 1991) (statute requires that accused have knowledge of victim's status as witness), cert. denied (Ala. 1992).

If evidence exists that the accused was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(15)
MURDER OF VICTIM LESS THAN 14 YEARS OF AGE

The defendant is charged with capital murder. The law states that the intentional murder of a person less than 14 years of age is capital murder.

A person commits an intentional murder if he causes the death of another person and, in performing the act or acts that cause the death of that person, he intends to kill that person (or another person).

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder of a person less than 14 years of age:

- (1) That (name of deceased) is dead;
- (2) That (name of deceased) was less than 14 years of age;
- (3) That the defendant (name of defendant) caused the death of (name of deceased) by (state the alleged act, e.g., shooting) him; and
- (4) That in committing the act(s) that caused the death of (name of deceased), the defendant intended to kill (name of deceased) or another person.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of intentional murder when the victim is less than 14 years of age, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of intentional murder when the victim is less than 14 years of age, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

If evidence exists that the defendant was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(16)
MURDER BY OR THROUGH DEADLY WEAPON USED FROM
OUTSIDE DWELLING UPON A VICTIM INSIDE DWELLING

The defendant is charged with capital murder. The law states that the intentional murder by or through the use of a deadly weapon fired or otherwise used from outside a dwelling while the victim is in a dwelling is capital murder.

A person commits an intentional murder if he causes the death of another person and, in performing the act or acts that cause the death of that person, he intends to kill that person (or another person).

To convict, the State must prove beyond a reasonable doubt each of the following elements of murder committed by or through the use of a deadly weapon fired or otherwise used from outside a dwelling while the victim is in a dwelling:

- (1) That (name of deceased) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased) by or through the use of a deadly weapon fired or otherwise used;
- (3) That the defendant (name of defendant) fired or otherwise used the deadly weapon from outside a dwelling;
- (4) That (name of deceased) was in a dwelling at the time of the offense; and
- (5) That in committing the act(s) that caused the death of (name of deceased), the defendant intended to kill (name of deceased) or another person.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

A "deadly weapon" is a firearm or anything manifestly designed, made, or adapted for the purposes of inflicting death or serious physical injury. The term includes, but is not limited to, a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any billy, black-jack, bludgeon, or metal knuckles. See Ala. Code 1975, § 13A-1-2(7).

A "dwelling" is a building that is used or normally used by a person for sleeping, living, or lodging. See Ala. Code 1975, § 13A-7-1(3).

-If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of murder committed by or through the use of a deadly weapon fired or otherwise used from outside a dwelling while the victim is in a dwelling, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of murder committed by or through the use of a deadly weapon fired or otherwise used from outside a dwelling while the victim is in a dwelling, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

If evidence exists that the defendant was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(17)
MURDER BY OR THROUGH DEADLY WEAPON USED
UPON A VICTIM INSIDE A VEHICLE

The defendant is charged with capital murder. The law states that the intentional murder of a person committed by or through the use of a deadly weapon while the victim is in a vehicle is capital murder.

A person commits an intentional murder if he causes the death of another person and, in performing the act or acts that cause the death of that person, he intends to kill that person (or another person).

To convict, the State must prove beyond a reasonable doubt each of the following elements of an intentional murder committed by or through the use of a deadly weapon while the victim is in a vehicle:

- (1) That (name of deceased) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased) by or through the use of a deadly weapon;
- (3) That (name of deceased) was in a vehicle at the time of the offense; and
- (4) That in committing the act(s) that caused the death of (name of deceased), the defendant intended to kill (name of deceased) or another person.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

A "deadly weapon" is a firearm or anything manifestly designed, made, or adapted for the purposes of inflicting death or serious physical injury. The term includes, but is not limited to, a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any billy, black-jack, bludgeon, or metal knuckles. See Ala. Code 1975, § 13A-1-2(7).

A vehicle includes any propelled device by which any person or property is transported on land, water, or in the

air, and includes motor vehicles, motorcycles, motorboats, and aircraft, and any vessel, whether propelled by machinery or not. See Ala. Code 1975, § 13A-1-2(15).

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of murder committed by or through the use of a deadly weapon while the victim is in a vehicle, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of murder committed by or through the use of a deadly weapon while the victim is in a vehicle, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

If evidence exists that the defendant was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).

Ala. Code 1975, § 13A-5-40(a)(18)
MURDER BY OR THROUGH DEADLY WEAPON
USED WITHIN OR FROM VEHICLE

The defendant is charged with capital murder. The law states that the intentional murder of a person committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle is capital murder.

A person commits an intentional murder if he causes the death of another person and, in performing the act or acts that cause the death of that person, he intends to kill that person (or another person).

To convict, the State must prove beyond a reasonable doubt each of the following elements of intentional murder committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle:

- (1) That (name of deceased) is dead;
- (2) That the defendant (name of defendant) caused the death of (name of deceased) by or through the use of a deadly weapon fired or otherwise used;
- (3) That (name of defendant) was in a vehicle at the time of the offense;
- (4) That in committing the act(s) that caused the death of (name of deceased), the defendant intended to kill (name of deceased) or another person.

A person acts intentionally when it is his purpose to cause the death of another person. The intent to kill must be real and specific.

A "deadly weapon" is a firearm or anything manifestly designed, made, or adapted for the purposes of inflicting death or serious physical injury. The term includes, but is not limited to, a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any billy, black-jack, bludgeon, or metal knuckles. See Ala. Code 1975, § 13A-1-2(7).

A vehicle includes any propelled device by which any person or property is transported on land, water, or in the

air, and includes motor vehicles, motorcycles, motorboats, and aircraft, and any vessel, whether propelled by machinery or not. See Ala. Code 1975, § 13A-1-2(15).

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of murder committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle, as charged, then you shall find the defendant guilty of capital murder.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of murder committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle, then you cannot find the defendant guilty of capital murder.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

If evidence exists that the defendant was intoxicated at the time of the charged intentional crime, the defendant is entitled to an instruction on lesser-included offenses(s). See Fletcher v. State, 621 So. 2d 1010 (Ala. Crim. App. 1993).