

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).

[Adopted 7-30-10.]