

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).

[Adopted 7-30-10.]