Ala. Code 1975, § 13A-5-40(a)(4)

MURDER DURING BURGLARY IN THE FIRST DEGREE
(Or Attempt Thereof)*
(Causes Physical Injury)

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

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

A person commits a burglary in the first degree if he/she knowingly and unlawfully enters or remains unlawfully in a dwelling and does so with intent to commit a crime therein and if, in effecting entry or while in the dwelling or in the immediate flight therefrom, he/she or another participant in the crime causes physical injury to any person who was not a participant in the crime. [13A-7-5(a)(2)]

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

(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/her;

(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 the defendant knowingly and unlawfully entered or remained unlawfully in a dwelling of (name of victim);

(5) That, in doing so, the defendant acted with the intent to commit a crime, namely (name of crime), therein;

(6) That, while in the dwelling or in effecting entry thereto, or in the immediate flight therefrom, the defendant (or another participant in the crime) caused physical injury to any person who was not a participant in the crime; **(AND)**

(7) That the murder took place during the burglary.

A *dwelling* is a building that is used or normally used by a person for sleeping, living, or lodging therein. [13A-7-1(2)]

[Read as appropriate] A *building* is any structure that may be entered and utilized by persons for business, public use, lodging, or the storage of goods, and such term includes any vehicle, aircraft, or watercraft used for the lodging of persons or for carrying on business therein. [13A-7-1(1)]

[Read as appropriate] A *building* includes any railroad box car or other rail equipment or trailer or tractor-trailer or combination thereof. [13A-7-1(1)]

[Read as appropriate] Where a *building* consists of two or more units separately occupied or secure, each shall be deemed both a separate building and a part of the main building. [13A-7-1(1)]

A person *enters* or *remains unlawfully* in or upon premises when he/she is not licensed, invited, or privileged to do so. [13A-7-1(3)]

[Read as appropriate] A person who, regardless of his/her intent, enters or remains in or upon premises that are at the time open to the public does so with license and privilege unless he/she defies a lawful order not to enter or remain, personally communicated to him/her by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building that is partly open to the public is not a license or privilege to enter or remain in that part of the building that is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him/her by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. [13A-7-1(3)]

It is alleged that the defendant intended to commit a crime, namely (name of crime). **[Insert instruction for the crime alleged here.]**

Physical injury means impairment of physical condition or substantial pain. Death, by definition, would constitute physical injury. [13A-1-2(12)]

During means in the course of the commission of or in connection with (or in immediate flight from) the commission of the burglary. [13A-5-39(2)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *intentionally* when it is his/her 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

described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

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 a burglary 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 a burglary 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

*This offense encompasses an attempt thereof. If the facts and law support the charge, then the instructions should be modified to reflect that. This includes modifying the elements in the instructions.

It is no defense that the offense charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if the offense could have been committed had the attendant circumstances been as the defendant believed them to be. [13A-4-2(b)]

If evidence exists that the defendant was intoxicated at the time of the charged intentional crime, he/she is entitled to an instruction on lesser-included offense(s). See Fletcher v. State, 621 So. 2d 1010, 1020-22 (Ala. Crim. App. 1993).