

**1032 EXAMPLE FELONY MURDER: DEATH CAUSED WHILE
COMMITTING ARMED BURGLARY AS A PARTY TO THE
CRIME: AIDING AND ABETTING C §§ 940.03;
943.10(2), 939.05**

Statutory Definition of the Crime

Felony murder, as defined in § 940.03 of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being while committing the crime of armed burglary as a party to the crime.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following are present.

1. The defendant was a party to the crime of armed burglary.
2. The death of (name of victim) was caused by the commission of the armed burglary.

**Determining Whether the Defendant Was A Party
To the Crime of Armed Burglary**

The first element of felony murder requires that the defendant was a party to the crime of armed burglary. This determination has two parts. I will first define what it means to be a party to the crime, which is the first part. Then I will define the elements of armed burglary, which is the second part.

Party To A Crime

"Party to a crime" means that all persons concerned in the commission of a crime may be found to have committed that crime although they did not commit it directly.

The State contends that the defendant was concerned in the commission of the crime of armed burglary by either directly committing it or by intentionally aiding and abetting the person who directly committed it. If a person intentionally aids and abets the commission of a crime, then that person is guilty of the crime as well as the person who directly committed it.

Definition of Aiding and Abetting

A person intentionally aids and abets the commission of a crime when, acting with knowledge or belief that another person is committing or intends to commit a crime, (he) (she) knowingly either

- assists the person who commits the crime, or
- is ready and willing to assist and the person who commits the crime knows of the willingness to assist.

To intentionally aid and abet armed burglary, the defendant must know that another person is committing or intends to commit the crime of armed burglary and have the purpose to assist the commission of that crime.

[USE THE FOLLOWING IF SUPPORTED BY THE EVIDENCE.]

(However, a person does not aid and abet if (he) (she) is only a bystander or spectator and does nothing to assist the commission of a crime.)

Jury's Decision – Party To A Crime

Before you may find that the defendant was a party to the crime of armed burglary, the State must prove by evidence which satisfies you beyond a reasonable doubt that the

defendant directly committed the crime of armed burglary or that the defendant intentionally aided and abetted the commission of that crime.

Unanimous Agreement Not Required Regarding Theory Of Party To A Crime

All twelve jurors do not have to agree as to whether the defendant directly committed the crime or aided and abetted the commission of the crime. However, each juror must be convinced beyond a reasonable doubt that the defendant was concerned in the commission of the crime in one of those ways.

Elements of Armed Burglary That the State Must Prove

Now I will define the elements of armed burglary.

Armed burglary, as defined in § 943.10(2) of the Criminal Code of Wisconsin, is committed by one who intentionally enters a building without the consent of the person in lawful possession and with intent to steal.

State's Burden of Proof

Before you may find that armed burglary was committed, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following five elements were present.

1. The defendant intentionally entered a building.
2. The defendant entered the building without the consent of the person in lawful possession.
3. The defendant knew that the entry was without consent.

4. The defendant entered the building with intent to steal.

"Intent to steal" requires that the defendant had the mental purpose to take and carry away movable property of another without consent and that the defendant intended to deprive the owner permanently of possession of the property. [It requires that the defendant knew the property belonged to another and knew the person did not consent to the taking of the property.]

5. The defendant or (name of other person) entered the building while armed with a dangerous weapon.

"Dangerous weapon" means _____.¹

"Armed" means that at the time of the entry the weapon must have been either on the defendant's person or within the defendant's reach. In addition, the defendant must have been aware of the presence of the weapon.

When Must Intent Exist?

The intent to steal must be formed before entry is made. The intent to steal, which is an essential element of burglary, is no more or less than the mental purpose to steal formed at any time before the entry, which continued to exist at the time of the entry.

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision on Armed Burglary

If you are satisfied beyond a reasonable doubt that the defendant was a party to the crime of armed burglary, you should determine whether the death of (name of victim) was caused by the commission of the armed burglary.

The Meaning of "Cause"

"Cause" means that the commission of the armed burglary was a substantial factor in producing the death.

ADD THE FOLLOWING IN CASES INVOLVING THE IMMEDIATE FLIGHT FROM A FELONY.

[The phrase "the commission of the crime" includes the period of immediate flight from that crime.]

Jury's Decision on Felony Murder

If you are satisfied beyond a reasonable doubt that the defendant was a party to the crime of armed burglary and that the death of (name of victim) was caused by the commission of armed burglary as that crime has been defined, you should find the defendant guilty of felony murder.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1032 EXAMPLE was originally published in 1989. This revision was approved by the Committee in April 2003; it adopted a new format.

This instruction adapts Wis JI-Criminal 1032 to case involving a felony murder based on the defendant's being party to the crime of armed burglary. It integrates material from four uniform instructions: Wis JI-Criminal 400, Party To Crime: Aiding and Abetting: Defendant Either Directly Committed Or Intentionally Aided the Crime Charged; Wis JI-Criminal 1032, Felony Murder: Death Caused While Committing A Felony As A Party To The Crime; Wis JI-Criminal 1421, Burglary With Intent To Steal; and, Wis JI-Criminal 1425A, Burglary While Armed.

This offense was chosen for the example in part because there is not a uniform instruction that integrates the "armed" component of armed burglary with the burglary instruction. Rather, it is treated as a special question. See Wis JI-Criminal 1425A. Footnotes are omitted from this instruction. A fully annotated model for felony murder is provided at Wis JI-Criminal 1032. See the other instructions cited above for footnotes specific to those components.

The penalty for violating § 940.03, as amended by 2001 Wisconsin Act 109, is imprisonment for not more than 15 years in excess of the maximum term of imprisonment for the underlying crime. This is a change from 20 years under prior law. For crimes committed on or after February 1, 2003, the penalty for armed burglary under § 943.10(2) is a Class E felony.

1. See Wis JI-Criminal 910 for an instruction on "dangerous weapon."