FIRST DEGREE MURDER

Introduction

Murder is the unlawful killing of a human being either with malice, or in the commission or attempted commission of certain felonies. Murder committed with deliberate premeditation and malice is murder in the first degree. Murder committed with extreme atrocity or cruelty and with malice is murder in the first degree. Murder committed in the commission or attempted commission of a felony punishable by a maximum sentence of imprisonment for life is murder in the first degree. Murder which does not appear to be murder in the first degree is murder in the second degree. The degree of murder shall be found by the jury.

I. DELIBERATE PREMEDITATION

In order to find the defendant guilty of first degree murder with deliberate premeditation, the Commonwealth must prove three elements beyond a reasonable doubt:

Element Number One: that the defendant committed an unlawful killing; Element Number Two: that the killing was committed with malice; and Element Number Three: that the killing was committed with deliberate premeditation. Now I shall further define each of these three elements:

Element Number One: an unlawful killing The Commonwealth must prove to you beyond a reasonable doubt that the defendant committed an unlawful killing. For a killing to be murder, it must be unlawful. The word "killing" refers to causing of death. Death must occur as a result of the defendant's acts.

**1. Cause of Death**

An act which in a natural and continuous sequence results in death, and without which death would not have occurred, is the cause of death.

**2. Definition of Death**

Death occurs when the heart has stopped long enough to result in complete and permanent loss of brain function. This complete and permanent loss of brain function occurs when, in the opinion of a licensed physician based on ordinary and accepted standards of medical practice, there has been a total and irreversible cessation of spontaneous brain functions and further attempts at resuscitation or continued supportive maintenance would not be successful in restoring such functions.

**3. Object of Killing Must Be a Human Being**

A killing is not murder unless a human being has been killed.

An unlawful killing is a killing done without excuse. Not all killings are unlawful. A killing may be excused, for example, in the case of self-defense, defense of another, or, in some cases, accident. The evidence in this case (does) (does not) raise the issue of whether this killing was excused as a result of (an accident) (or) (the defendant's act(s) of self-defense) (or) (defense of another) The burden of proof is on the Commonwealth to prove beyond a reasonable doubt that the defendant unlawfully killed the deceased.

Element Number Two: malice

The second element the Commonwealth must prove beyond a reasonable doubt is that the killing was committed with malice. Malice, as it applies to deliberately premeditated murder, means an intent to cause death. The Commonwealth must prove that the defendant actually intended to cause the death of the deceased.

Element Number Three: deliberate premeditation

The third element the Commonwealth must prove beyond a reasonable doubt is that the killing was committed with deliberate premeditation. For the Commonwealth to prove deliberate premeditation, the Commonwealth must prove that the defendant thought before he6 acted; that is, the defendant decided to kill after deliberation. The element of deliberation, however, does not require an extended time span, nor does it mean that the deliberation must be accomplished slowly. Rather it refers to the purposeful character of the premeditation.

Deliberation may be a matter of days, hours or even seconds. It is not so much a matter of time as of logical sequence. First, the deliberation and premeditation, then the decision to kill, and lastly, the killing in furtherance of the decision. All of this may occur within a few seconds. However, deliberate premeditation excludes action which is taken so quickly that there is no time to reflect on the action and then decide to do it. The Commonwealth must show that the defendant's resolution to kill was, at least for some short period of time, the product of reflection.

If, after considering all the evidence in this case, you conclude that the Commonwealth has proved beyond a reasonable doubt each of these three elements I have just defined, that is,

(1) that the defendant committed an unlawful killing; (2) that the killing was committed with malice; and (3) that the killing was committed with deliberate premeditation, then you should find the defendant guilty of murder in the first degree committed with deliberate premeditation.

If, however, after your consideration of all the evidence, you find the Commonwealth has not proved any one of these three elements beyond a reasonable doubt, you must not convict the defendant of murder in the first degree on the theory of deliberate premeditation.