

ICJI 1601 PERSISTENT VIOLATOR

INSTRUCTION NO ____

Having found the defendant guilty of _____, you must next consider whether the defendant has been convicted on [at least] two prior occasions of felony offenses.

The state alleges the defendant has prior convictions as follows:

1. On or about the _____ day of _____, 200 _____, the defendant was convicted of _____, and

2. On or about the _____ day of _____, 200 _____, the defendant was convicted of _____
[.] [and]

[3. (Add any other alleged prior convictions).]

The existence of a prior conviction must be proved beyond a reasonable doubt and your decision must be unanimous.

Comment

State v. Johnson, 86 Idaho 51, 383 P2d 326 (1963), held that a persistent violator charge should be stated in a two-part information. The first part should state the particular offense with which the defendant is charged, and be signed at the end of the page by the prosecutor. The second part, or page, should allege former convictions, and be separable from the first part. It should be signed separately by the prosecutor. The entire information should be read to the accused at arraignment. However, when the jury is informed of the charge only the first part is read, then, after, and depending upon the verdict on part one, the second part is read, and the jury deliberates further.

Additional instruction on persistent violator and suitable verdict forms -- for findings by the jury on each alleged prior conviction -- should be given upon sending the jury back to deliberate further.

ICJI 1602 USE OF A FIREARM OR DEADLY WEAPON

INSTRUCTION NO. _____

[If you find] [Having found] the defendant guilty of [aggravated assault]; [aggravated battery]; [(assault) or (battery) with intent to commit a serious felony (murder, rape, infamous crime against nature, mayhem, robbery, lewd and lascivious conduct with a minor)]; [burglary]; [rescuing a prisoner]; [escape by one charged or convicted of a (felony) or (misdemeanor)]; [murder]; [manslaughter]; [assault with intent to murder]; [kidnapping]; [mayhem]; [rape]; [robbery], you must next consider whether the defendant displayed, used, threatened or attempted to use a [firearm] [or] [deadly weapon] in the commission of the crime.

[Firearm means any weapon capable of ejecting or propelling one or more projectiles by the action of any explosive or combustible propellant, and includes unloaded firearms and firearms which are inoperable but which can readily be rendered operable.]

[A deadly weapon is any object, instrument or weapon which is capable of producing, and likely to produce, death or great bodily injury.]

If you unanimously find beyond a reasonable doubt that the defendant used, displayed, threatened with or attempted to use a [firearm] [or] [deadly weapon] in the commission of the above crime, then you must so indicate on the verdict form submitted to you. If, on the other hand, you cannot make such a finding, then you must make that indication on the verdict form.

Comment

The court may consider whether to give this instruction along with instructions on the case in chief, or to allow the jury to deliberate on the case in chief first, and on the firearm enhancement second, depending on the case. *See State v. Stedtfeld*, 108 Idaho 695, 698, 701 P.2d 315 (Ct.App. 1985). Special verdict form ICJI 222 or 224 may be used.