

ICJI 1401 POSSESSION OF FIREARM BY FELON

INSTRUCTION NO. _____

In order for the defendant to be guilty of Unlawfully Possessing a Firearm, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] knowingly [owned] [purchased] [possessed] [had under the defendant's custody or control] a firearm, and
4. when doing so, the defendant previously had been convicted of a felony.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. s 18-3316.

For a definition of "possession", see ICJI 421.

ICJI 1402 FIREARM DEFINED

INSTRUCTION NO. _____

The term "firearm" means any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas or mechanical means, whether operable or inoperable.

Comment

I.C. s 18-3316(3).

ICJI 1403 CONVICTED OF A FELONY DEFINED

INSTRUCTION NO. _____

To establish the defendant [name] was convicted of a felony, the state must prove that the defendant [pled guilty] [nolo contendere] to] [was found guilty of] [one of] the following crime[s]:

The crime of [description], a violation of [code section], which was a felony under the law of [name of jurisdiction].

Comment

I.C. s 18-3316(2).

The felony must have been one of the crimes enumerated in I.C. s 18-310 or any comparable crime denominated a felony under the law of another state, territory, commonwealth, or other jurisdiction of the United States. The committee concluded that the phrase "other jurisdiction of the United States" includes federal violations.

The committee concluded that whether a crime committed in another jurisdiction was comparable to the crimes enumerated in IC s 18-310 and was a felony under the law of that jurisdiction are questions of law for the judge to decide and are not questions to submit to the jury.

ICJI 1404 DEFENSE: PRIOR CONVICTION NULLIFIED

INSTRUCTION NO. _____

[A felony conviction does not make it unlawful to [own] [purchase] [possess] [control] [have custody of] a firearm if that conviction has been nullified through expunction, pardon, setting aside the conviction, or other comparable procedure by the jurisdiction where the felony conviction occurred.]

[The defendant cannot be guilty if the defendant's right to bear arms was restored by any provision of Idaho law before the alleged offense of Unlawfully Possessing a Firearm occurred.]

The state must prove beyond a reasonable doubt that the defendant's [conviction was not nullified through any of the procedures described above] [right to bear arms was not restored by any provisions of Idaho law].

Comment

I.C. s 18-3316(4).

Because the exceptions contained in subsection (4) of I.C. s 18-3316 are not an integral part of the definition of the crime as found in subsection (1), they are not elements of the offense that the state must disprove in its case in chief. *Robinson v. State*, 283 S.E.2d 356 (Ga. Ct. App. 1981); *State v. Alley*, 263 A.2d 66 (Me. 1970). Cf., *State v. Segovia*, 93 Idaho 208, 457 P.2d 905 (1969), where an exception contained within the statutory definition of the crime was held to be an element of that crime.

This instruction should be given only if evidence has been produced supporting it.

ICJI 1405 UNLAWFUL DISCHARGE OF A FIREARM

INSTRUCTION NO. _____

In order for the defendant to be guilty of Unlawful Discharge of a Firearm, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] intentionally discharged a firearm
4. at an (inhabited dwelling house) (occupied building) (occupied motor vehicle) (inhabited mobile home) (inhabited travel trailer) (inhabited camper).

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The term "inhabited" means currently being used for dwelling purposes, whether occupied or not.

Comment

I.C. s 18-3317.

For misdemeanor offenses see I.C. s 18-3305 and I.C. s 18-3306; for a definition of "firearm", see ICJI 1402.

ICJI 1406 CARRYING A CONCEALED WEAPON ON SCHOOL PROPERTY

INSTRUCTION NO. _____

In order for the defendant to be guilty of Carrying a Concealed Weapon on School Property, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. [while on the property of a school] [or] [while in any building, stadium, or other structure on school grounds which was at the time being used for an activity sponsored by or through a school in this state] [or] [while riding on transportation provided by a school]
5. carried a [firearm] [dirk knife] [bowie knife] [dagger] [metal knuckles] [deadly or dangerous weapon]
6. which [was] [were] concealed on or about the defendant's person, and
7. the defendant was at that time under 21 years of age.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

As used in this instruction, "school" means a public or private, elementary or secondary school [and "firearm" means a pistol, revolver or other firearm designed to be fired with the use of a single hand.]

Comment

I.C. s 18-3302D. See ICJI 1206 for the definition of a deadly weapon.

ICJI 1407 DEFENSE: DELIVERING CHILDREN TO OR FROM SCHOOL

INSTRUCTION NO. _____

The statute making it illegal to carry a concealed weapon on school property provides that it is not illegal to do so when a person is in a private vehicle delivering children to or from school or school activities. If you find that the defendant was carrying a concealed weapon on school property, you cannot find the defendant guilty unless you also find beyond a reasonable doubt that when doing so the defendant was not in a private vehicle delivering children to or from school or school activities.

Comment

I.C. ss 18-3302D(1) & (4). The statute defining the crime states that its provisions do not apply to persons engaged in certain activity. The state need not, in its case in chief, negative those exceptions. Rather, the defendant must raise the exception as a defense. *McKelvey v. United States*, 260 U.S. 353 (1922); *Cope v. State*, 89 Idaho 64, 402 P.2d 970 (1965).

ICJI 1408 DEFENSE: HUNTER SAFETY COURSE

INSTRUCTION NO. _____

The statute making it illegal to carry a concealed firearm on school property provides that it is not illegal to do so when a person is carrying the firearm as part of the requirements for a hunter safety course offered by or approved by the school district. If you find that the defendant was carrying a concealed firearm [on school property] [or] [in any building, stadium, or other structure on school grounds] [or] [while riding in school provided transportation], you cannot find the defendant guilty unless you also find beyond a reasonable doubt that when doing so the defendant was not carrying the firearm as part of the requirements for a hunter safety course offered by or approved by the school district.

Comment

I.C. ss 18-3302D(1) & (4). The statute defining the crime states that its provisions do not apply to persons engaged in certain activity. The state need not, in its case in chief, negative those exceptions. Rather, the defendant must raise the exception as a defense. *McKelvey v. United States*, 260 U.S. 353 (1922); *Cope v. State*, 89 Idaho 64, 402 P.2d 970 (1965).

ICJI 1409 DEFENSE: AUTHORIZATION BY SCHOOL DISTRICT

INSTRUCTION NO. _____

The statute making it illegal to carry a concealed firearm on school property provides that it is not illegal to do so when a person is carrying the firearm while under the supervision of the school district or of an employee of the school district who was authorized to give such permission. If you find that the defendant was carrying a concealed firearm [on school property] [or] [in any building, stadium, or other structure on school grounds] [or] [while riding in school provided transportation], you cannot find the defendant guilty unless you also find beyond a reasonable doubt that while doing so the defendant was not under the supervision of the school district or of an employee of the school district who was authorized to give such permission.

Comment

I.C. s 18-3302D(1) & (4). The statute defining the crime states that its provisions do not apply to persons engaged in certain activity. The state need not, in its case in chief, negative those exceptions. Rather, the defendant must raise the exception as a defense. *McKelvey v. United States*, 260 U.S. 353 (1922); *Cope v. State*, 89 Idaho 64, 402 P.2d 970 (1965).

ICJI 1410 DEFENSE: REQUIREMENT OF LAW

INSTRUCTION NO. _____

The statute making it illegal to carry a concealed firearm on school property provides that it is not illegal to do so when a person is carrying the firearm pursuant to a requirement of law or in compliance with law. If you find that the defendant was carrying a concealed firearm [on school property] [or] [in any building, stadium, or other structure on school grounds] [or] [while riding in school provided transportation], you cannot find the defendant guilty unless you also find beyond a reasonable doubt that while doing so the defendant was not carrying the firearm pursuant to a requirement of law or in compliance with law.

Comment

I.C. s 18-3302D(1) & (4). The statute defining the crime states that its provisions do not apply to persons engaged in certain activity. The state need not, in its case in chief, negative those exceptions. Rather, the defendant must raise the exception as a defense. *McKelvey v. United States*, 260 U.S. 353 (1922); *Cope v. State*, 89 Idaho 64, 402 P.2d 970 (1965).

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ICJI 1415 CARRYING A CONCEALED WEAPON

INSTRUCTION NO.

In order for the defendant to be guilty of Carrying a Concealed Weapon, the state must prove each of the following:

1. On or about [date]
 2. in the state of Idaho,
 3. the defendant [name]
 4. carried a [bowie knife] [dagger] [pistol] [deadly or dangerous weapon]
 5. which was concealed on or about the defendant's person,
 6. the defendant did not have a license to carry a concealed weapon, and
- [7. the defendant was not in (his) (her) place of abode or fixed place of business.]

[or]

[7. the defendant was in a motor vehicle

8. which was (inside the limits or confines of a city) (inside a [mining camp] [lumbering camp] [logging camp] [railroad camp]).

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

[A pistol or revolver, whether loaded or unloaded, is not concealed in a motor vehicle if it is located in plain view.]

[A firearm may be concealed legally in a motor vehicle so long as it is disassembled or unloaded.]

Comment

I.C. s 18-3302. The state bears the burden of proving that the defendant did not have a license to carry a concealed weapon. *State v. Morales*, 127 Idaho 951, 908 P.2d 1258 (Ct. App. 1996).

"Dirk", "dirk knife", and "dagger" are synonymous. They refer to a straight, double-edged knife primarily fitted for stabbing. *People v. Ruiz*, 263 P. 836 (Cal. App. 1928); 26A C.J.S. p. 959 (1956); Black's Law Dictionary 465 (4th rev. ed. 1968). A "bowie knife" is a long knife shaped like a dagger but having only one edge. *Knox v. State*, 6 S.W.2d 318 (Tenn. 1928); Black's Law Dictionary 233 (4th ed. rev. 1968). It was used as a weapon by American frontiersmen. *Id.*; Webster's New World Dictionary 168 (2d college ed. 1970) (a steel knife about 15 inches long).

[Added July 2005]

ICJI 1451 ATTEMPT -- ELEMENTS

INSTRUCTION NO. ____

In order for the defendant to be guilty of Attempted [offense], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant did some act which was a step towards committing the crime of [offense], and
4. when doing so the defendant intended to commit that particular crime.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. s 18-306.

Attempt consists of two elements: (1) having an intent to do an act or bring about certain consequences which would in law amount to a crime and (2) doing an act in furtherance of that intent which goes beyond mere preparation. *State v. Glass*, 139 Idaho 815, 87 P.3d 302 (Ct. App. 2003).

I.C. s 18-305 provides that a person may be convicted of an attempt even though the evidence shows that the crime attempted was actually committed. Therefore, under Idaho law the elements of attempt do not include the element that the defendant failed to consummate the crime attempted.

Factual or legal impossibility for the defendant to commit the intended crime is not relevant to a determination of defendant's guilt of attempt. *State v. Glass*, 139 Idaho 815, 87 P.3d 302 (Ct. App. 2003).

In some cases, an attempt may be an included offense to the crime charged. If the facts warrant giving such instruction, then the included offense introductory instruction (ICJI 225) should be given before this instruction.

ICJI 1452 ATTEMPT -- ELEMENTS OF CRIME ATTEMPTED

INSTRUCTION NO. ____

The crime of [offense] would be committed if a person did each of the following:

1. [Renumber and insert elements of the crime, excluding the allegations regarding the date, in the state of Idaho, and the defendant's name].

Comment

This instruction would not have to be given if the attempt was an included offense of the crime charged.

ICJI 1453 ATTEMPT -- SUBSTANTIAL STEP DEFINED

INSTRUCTION ____

For an act to be a step towards committing the crime, the act must be more than merely preparing to commit the crime. Acts done in planning to commit a crime, or in devising, obtaining, or arranging the means to commit it, are not sufficient to constitute an attempt. To be a step towards committing the crime, the act must be something done beyond mere preparation which shows that the defendant began carrying out the plan to commit the crime.

Comment

State v. Otto, 102 Idaho 250, 629 P.2d 646 (1981); *State v. Schirmer*, 70 Idaho 83, 211 P.2d 762 (1949).

ICJI 1454 DEFENSE: ABANDONMENT OF ATTEMPT

INSTRUCTION NO. ____

A person who has committed acts constituting an attempt to commit a crime is guilty of attempting that crime even if the person does not proceed any further with the intent to commit the crime. It would not matter whether the person voluntarily abandoned any further efforts to complete the crime or was prevented or interfered with in completing the crime. However, if a person intends to commit a crime but, before committing any act toward the ultimate commission of the crime, the person freely and voluntarily abandons the original intent and makes no effort to accomplish the intended crime, the offense of attempt has not been committed.

ICJI 1411 THREATENING VIOLENCE ON SCHOOL GROUNDS

INSTRUCTION NO.

In order for the defendant to be guilty of Threatening Violence on School Grounds, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. while on school grounds
5. willfully
6. threatened by word or act
7. to use a firearm or other deadly or dangerous weapon
8. to do violence
9. to any other person who is on school grounds.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

"Deadly or dangerous weapon" means a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury.

"Firearm" means any weapon, whether loaded or unloaded, from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, regardless of whether such weapon is operable.

"On school grounds" means in, or on the property of, a public or private elementary or secondary school.

The threats prohibited by this section encompass only those statements or acts where the speaker or actor intends to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The state is not required to prove that the defendant actually intended to carry out the threat.

Comment