

ICJI 501 ROBBERY

INSTRUCTION NO.

In order for the defendant to be guilty of Robbery, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. [name of victim] had possession of personal property,
4. which the defendant [name] took from [name of victim]'s person or from [name of victim]'s immediate presence,
5. against the will of [name of victim]
6. by the intentional use of force or fear to overcome the will of [name of victim], and
7. with the intent permanently to deprive [name of victim] of the property.

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. §§ 18-6501 & 18-6502.

*State v. Olin*, 112 Idaho 673, 675, 735 P.2d 984, 986 (1987); *State v. Oldham*, 92 Idaho 124, 438 P.2d 275 (1968).

It is immaterial whether the defendant harbored an intent to steal when the violence or intimidation occurred if, when taking the victim's possessions, the defendant knows that his violence or threats motivated the victim's surrender of the property. *State v. Belue*, 127 Idaho 464, 902 P.2d 489 (Ct. App. 1995).

ICJI 502 ROBBERY-FEAR DEFINED

INSTRUCTION NO.

The fear required for the crime of robbery must be [the fear of an unlawful injury to the person or property of (name of victim)] [or] [the fear of an unlawful injury to the person or property of any relative or family member of (name of victim)] [or] [the fear of an immediate and unlawful injury to the person or property of any person who was in the company of (name of victim) at the time].

The fear must have been such as would have overcome the will of a reasonable person, under similar circumstances.

Comment

I.C. § 18-6502.

*State v. Knee*, 101 Idaho 484, 487, 616 P.2d 263, 266 (1980).

ICJI 511 BURGLARY

INSTRUCTION NO.

In order for the defendant to be guilty of Burglary, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] entered [place entered], [and]
4. at the time entry was made, the defendant had the specific intent to commit [theft] [name of other 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. § 18-1401.

This instruction reflects the 1992 legislative consolidation of first-degree burglary and second degree burglary into a single offense of Burglary. 1992 Sess. Laws, ch. 167, § 1. The consolidated offense is applicable to those crimes of burglary occurring on or after July 1, 1992.

If the pertinent offense in number 4 is not charged as a separate count, the court should give an appropriate instruction defining that offense, e.g., ICJI 574 (Theft).

ICJI 512 BURGLARY WITH EXPLOSIVES

INSTRUCTION NO.

In order for the defendant to be guilty of Burglary with Explosives, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] broke into and entered a building,
4. with the intent to commit a crime, and
5. opened or attempted to open a [vault] [safe] [secure place] within said building
6. by the use of an explosive.

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. § 18-1405.

ICJI 513 BURGLARY-CLOSED VEHICLE/TRAILER

INSTRUCTION NO.

In this case it is alleged that the entry was of a "closed [vehicle] [trailer]." The [vehicle] [trailer]" was closed if the entry could not have been made without opening a door or window or some other part of the [vehicle] [trailer].

The state has the burden of proving beyond a reasonable doubt that the [vehicle] [trailer] was a "closed [vehicle] [trailer]."

Comment

I.C. § 18-1401. "Closed vehicle" includes a camper detached from a truck and resting on the ground. State v. Martinez, 122 Idaho 158, 832 P.2d 331 (Ct. App. 1992).

NOTE: This instruction only applies to burglaries committed prior to July 1, 1997.

ICJI 514 BURGLARY - KNOWLEDGE OF PROPERTY

INSTRUCTION NO.

To prove that the defendant intended to commit a theft inside the [place entered], the state is not required to prove that there was anything of value inside, nor must it prove that the defendant knew there was anything of value inside. Likewise, the state is not required to prove that the defendant actually stole or attempted to steal anything. The state need only prove that when the defendant entered [place entered] the defendant intended to steal anything inside that the defendant might desire to take.

Comment

State v. McCormick, 100 Idaho 111, 594 P.2d 149 (1979);  
State v. Dwyer, 33 Idaho 224, 191 P. 203 (1920); Matthews  
v. State, 113 Idaho 83, 741 P.2d 370 (Ct. App. 1987).

ICJI 515 BURGLARY-ENTRY

INSTRUCTION NO.

The manner or method of entry is not an essential element of the crime of burglary. An entry can occur without the use of force or the breaking of anything.

The intent to commit the crime of [name of felony] must have existed at the time of entry.

Comment

State v. Bull, 47 Idaho 336, 276 P. 528 (1929).

ICJI 516 POSSESSION OF BURGLARIOUS INSTRUMENTS

INSTRUCTION NO.

In order for the defendant to be guilty of Possession of Burglarious Instruments, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] [had upon the defendant] [or] [possessed] a [picklock] [crowbar] [bit] or other instrument or tool, and
4. had the intent to break or enter any [house] [room] [apartment] [tenement] [shop] [warehouse] [store] [mill] [barn] [stable] [outhouse] [or other building], with the intent to commit [theft] [name of other 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. §§ 18-1406 & 18-1401.



ICJI 517 TAMPERING WITH A VEHICLE

INSTRUCTION NO.

In order for the defendant to be found guilty of Tampering With a Vehicle, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
- [3. the defendant [name] climbed into or upon [describe the vehicle]
4. without the consent of the owner or person in charge of the vehicle,
5. when doing so the defendant had the intent to commit [name of crime], and
6. the defendant was not acting [in an emergency in furtherance of public safety or convenience] [by or under the direction of an officer in the regulation of traffic or performance of any other official duty].]

[or]

- [3. the defendant attempted to manipulate the starter or brakes of [describe the vehicle], or to set such vehicle in motion
4. while such vehicle was at rest and unattended, and
5. when doing so the defendant was not acting [in an emergency in furtherance of public safety or convenience] [by or under the direction of an officer in the regulation of traffic or performance of any other official duty].]

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. § 49-230. The exception in the statute must be disproved by the state beyond a reasonable doubt. State v. Segovia, 93 Idaho 208, 457 P.2d 905 (1969).

ICJI 518 UNLAWFUL ENTRY

INSTRUCTION NO.

In order for the defendant to be found guilty of Unlawful Entry, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] entered [place entered]
4. without the permission of the owner or the owner's agent or any person in lawful possession of the [place entered], and
5. such entry was not made under a landlord-tenant relationship.

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. § 18-7034.

ICJI 519 DEFACING SERIAL NUMBERS

INSTRUCTION NO.

In order for the defendant to be found guilty of [Defacing] [Altering] [Removing] [Covering] [Destroying] [Obliterating] Serial or Identification Numbers, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] [defaced] [altered] [removed] [covered] [destroyed] [obliterated] the manufacturer's serial or identification number on an item of property
4. with the intent to deceive or defraud another person.

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. § 18-2410.

ICJI 520 DISPOSING OF PROPERTY WITH DEFACED SERIAL NUMBERS

INSTRUCTION NO.

In order for the defendant to be found guilty of Disposing of Property on which the manufacturer's serial or identification number has been [defaced] [altered] [removed] [covered] [destroyed] [obliterated], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] knowingly ([disposed of] [sold] [traded] [bartered]) (offered to [dispose of] [sell] [trade] [barter]) any item of property on which the manufacturer's serial or identification number has been [defaced] [altered] [removed] [covered] [destroyed] [obliterated]
4. with the intent to deceive or defraud another person or persons.

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. § 18-2410.

ICJI 542A GRAND THEFT

INSTRUCTION NO.

In order for the defendant to be guilty of Grand Theft, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] wrongfully [took] [detained] [or] [withheld] property [described as: (description of property)],
4. from an owner,
5. with the intent to deprive an owner of the property or to appropriate the property, and
6. [the property exceeded one thousand dollars (\$1000) in value]

[or]

[the property was a public record, writing, or instrument that was kept, filed, or deposited according to law with or in the keeping of any public office or public servant]

[or]

[the property was a check, draft, or order for the payment of money upon any bank]

[or]

[the property was the account number of a check, draft, or order for the payment of money upon any bank]

[or]

[the property was a financial transaction card]

[or]

[the property was the account number of a financial transaction card]

[or]

[the property was obtained by extortion]

[or]

[the property was livestock or any other animal which exceeded one hundred fifty dollars (\$150 in value, and which was taken or deliberately killed by the defendant)]

[or]

[the property was taken from the person of another. For property to be taken from the person, the property must be either on the body of, or in the clothing being worn by, or in a receptacle being carried by the owner]

[or]

[the property was any firearm, rifle, or shotgun]

[or]

[the property was [taken] [detained] [withheld] during three or more incidents; and

a. the aggregate value of the property is over \$50.00 and

b. the property was stolen during a series of unlawful acts committed over a period of up to three days.]

[or]

[the property was anhydrous ammonia].

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

#### Comment

I.C. § 18-2407.

Effective July 1, 1999, the value of property necessary to constitute grand theft was increased from \$300 to \$1,000.

See I.C. § 18-3123(6) for the definition of a "financial transaction card."

If, pursuant to I.C. § 18-2407(1)(b)(8), several thefts are charged in one count as being part of a common scheme or plan with the aggregate value of the property stolen exceeding \$1,000, use ICJI 554.

Using ICJI 540 and ICJI 542 is intended to eliminate the need of instructing that Petit Theft is an included offense of Grand Theft.

ICJI 542B PETIT THEFT

INSTRUCTION NO.

In order for the defendant to be guilty of Petit Theft, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] wrongfully [took] [detained] [withheld] [deliberately killed] property [described as: (description of property)],
4. from an owner, and
5. the defendant [took] [detained] [withheld] the property with the intent to deprive an owner of the property or to appropriate the property.

Comment

I.C. § 18-2407.

Effective July 1, 1999, the value of property necessary to constitute grand theft was increased from \$300 to \$1,000.

See I.C. § 18-3123(6) for the definition of a "financial transaction card."

If, pursuant to I.C. § 18-2407(1)(b)(8), several thefts are charged in one count as being part of a common scheme or plan with the aggregate value of the property stolen exceeding \$1,000, use ICJI 554.

Using ICJI 540 and ICJI 542 is intended to eliminate the need of instructing that Petit Theft is an included offense of Grand Theft.



ICJI 543 THEFT BY DECEPTION

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Deception, the state must prove each of the following:

1. On or about [date]
  2. in the state of Idaho
  3. the defendant [name] obtained or exerted control over [description of property],
  4. another person was the owner of such property,
  5. the defendant did so by knowingly [doing one or more of the following:]
    - [(a)] [creating or confirming another's impression which is false and which the defendant did not believe to be true, or]
    - [(b)] [failing to correct a false impression which the defendant previously had created or confirmed, or]
    - [(c)] [preventing another person from acquiring information relevant to the disposition of the property, or]
    - [(d)] [[selling or otherwise transferring] [or] [granting a [security interest] [mortgage] in] the property without disclosing that another person claimed [to have [a lien] [a security interest] [a mortgage] [description of interest claimed] in] [to be the owner of] the property, whether or not such claim is valid or is a matter of official record];
    - [(e)] [promising performance [with no intention of performing] [or] [knowing it will not be performed];
- and
6. the defendant had the intent to deprive the owner of the property or to appropriate the property to the defendant or to some person other than the owner.

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. § 18-2403(2)(a).

The use of ICJI 571 and 572 defining owner and person should be considered.

ICJI 544 THEFT BY FALSE PROMISE

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by False Promise, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] obtained [description of property],
4. another person was the owner of such property,
5. the defendant did so pursuant to a scheme to defraud by representing that [the defendant] [or] [some other person] would in the future engage in particular conduct,
6. when making the representation the defendant [did not intend to engage in such conduct] [or] [did not believe that the other person intended to engage in such conduct], and
7. when obtaining the property the defendant had the specific intent to deprive the owner of such property, or to appropriate it to the defendant or to some person other than the owner.

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 fact that the promised conduct was not performed is not enough by itself to support a finding of guilt.

Comment

I.C. § 18-2403(2)(d).

In an appropriate case the term "representation" may need to be defined. The committee believes the term is of current usage and has not provided a defining instruction.

ICJI 545 THEFT BY EXTORTION

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Extortion, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] caused [name of victim] to deliver [to the defendant] [or] [to another person] [description of property],
4. the defendant did so by creating in [name of victim] a fear that if the property were not so delivered then the defendant or some other person would [do one or more of the following:]

[physically injure some person in the future,] [or]

[damage property,] [or]

[engage in conduct constituting a crime,] [or]

[accuse a person of a crime or cause criminal charges to be filed against such person,] [or]

[expose a secret or publicize an asserted fact, whether true or false, which would tend to subject a person to hatred, contempt, or ridicule,] [or]

[testify or provide information] [or] [withhold testimony or information] about another person's legal claim or defense,] [or]

[use or abuse the defendant's position as a public servant by performing some act within or related to the defendant's official duties, or by failing or refusing to perform an official duty, in such a manner as to affect some other person adversely,] [or]

[perform any act which would not in itself materially benefit the defendant but which is calculated to harm another person materially with respect to health, safety,

business, calling, career, financial condition, reputation,  
or personal relationships,]

[cause a strike, boycott, or other collective labor group  
action injurious to some person's business, unless such  
property was demanded or received for the benefit of the  
labor group in whose interest the defendant claimed to  
act,]

and

5. when the property was delivered, the defendant had  
the specific intent to deprive the owner of the property or  
to appropriate the property to the defendant or to some  
person other than the owner.

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. § 18-2403(2)(e).

ICJI 546 THEFT DEFENSE: EXTORTION

INSTRUCTION NO.

The defendant could lawfully threaten to charge [name of person] with a crime if:

1. the defendant reasonably believed the threatened criminal charge to be true, and
2. the defendant's sole purpose was to compel or cause [name of victim] to take reasonable action to make good the wrong which was the subject of the threatened charge.

Comment

I.C. § 18-2406(4).

This instruction applies only to a charge of extortion under IC § 18-2403(2)(e)(4). If additional claims of extortion are alleged this instruction will need appropriate modification.

ICJI 547 THEFT BY POSSESSION OF STOLEN PROPERTY

INSTRUCTION NO.

In order for the Defendant to be guilty of Theft by Possession of Stolen Property, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] knowingly [received] [retained] [concealed] [obtained control over] [possessed] [disposed of] [describe property],
4. either knowing the property was stolen by another or under such circumstances as would reasonably induce the defendant to believe the property was stolen,
5. such property was in fact stolen, and
6. any of the following occurred:
  - (a) the defendant had the intent to deprive the owner permanently of the use or benefit of the property, or
  - (b) the defendant knowingly used, concealed or abandoned the property in such manner as to deprive the owner permanently of the use or benefit of the property, or
  - (c) the defendant used, concealed, or abandoned the property knowing that such use, concealment or abandonment would have probably deprived the owner permanently of the use or benefit of the property.

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.

Property is stolen when a person wrongfully takes, obtains, or withholds it from the owner with the intent to deprive the owner of the property or to appropriate it to any person other than the owner.

Comment

I.C. § 18-2403(4).

ICJI 548 THEFT OF LOST PROPERTY

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Acquiring Lost Property, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] exercised control over [description of the property],
4. another person was the owner of the property,
5. the defendant knew that the property was [lost or mislaid] [or] [delivered under a mistake] [as to the identity of the recipient] [or] [the nature or amount of the property],
6. the defendant did not take reasonable measures to return the property to the owner, and
7. the defendant had the intent to deprive the owner of the property, or to appropriate the property to the defendant or to any person other than the owner.

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. § 18-2403(2)(c).



ICJI 549 THEFT BY FAILURE TO RESTORE LOST PROPERTY

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Failure to Restore Lost Property, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] exercised control over [description of property],
4. another person was the owner of the property,
5. the property was [lost or mislaid] [or] [delivered under a mistake as to (the identity of the recipient) (or) (the nature or amount of the property)],
6. [the defendant knew or learned of the identity of the owner of the property] [or] [the defendant knew, was aware of, or learned of a reasonable method of identifying the owner of the property],
7. the defendant failed to take reasonable measures to restore the property to its owner, and
8. the defendant had the intent to deprive the owner permanently of the use or benefit of the property.

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. § 18-2403(2)(c).

ICJI 550 THEFT BY TEMPORARY USE OF PROPERTY OR SERVICES

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Temporary Use of [Property] [or] [Services], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] obtained the temporary use of [description of property, labor, or services],
4. another person was the owner of such [property] [labor] [services],
5. the [property] [labor] [services] [was] [were] available only for hire, and
6. the defendant did so [by means of threat] [or] [by deception] [or] [knowing that such use was without the consent of the person providing the [property] [labor] [services]].

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. § 18-2403(5)(a). In an appropriate case, "property," "owner," "deception," or other word of art may need to be defined.

ICJI 551 THEFT BY UNAUTHORIZED CONTROL OR TRANSFERS

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Unauthorized Control [or] [Transfer], the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] [took or exercised control over] [or] [made a transfer of] [description of property or property interest],
4. another person was the owner of the property,
5. the defendant knew that the defendant was not authorized by the owner to do so, and
6. the defendant had the intent to deprive the owner of such property.

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. § 18-2403(3).

ICJI 552 THEFT BY FAILING TO RETURN RENTAL VEHICLE

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Failing to Return Rental Vehicle, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] rented or leased a motor vehicle under an agreement in writing which provided for the return of the vehicle to [insert particular place] at [insert particular time], and
4. the defendant willfully or intentionally failed to return the vehicle to the agreed place within forty-eight hours after the agreed time.

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. § 18-2403(5)(b).

ICJI 553 THEFT BY DIVERSION OF SERVICES

INSTRUCTION NO.

In order for the defendant to be guilty of Theft by Diverting Services, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] had control over the disposition of services performed by [insert name(s) or description of provider(s)],
4. the defendant was not entitled to the services,
5. the defendant knowingly diverted the services [to the defendant's own benefit] [or] [to the benefit of a person who was not entitled to them].

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. § 18-2403(5)(c). The defendant cannot be the sole provider of the services diverted.

ICJI 554 THEFT IN INSTALLMENTS

INSTRUCTION NO.

If the evidence shows that [the defendant] took, obtained, or withheld property by theft at various times from the same person; and that the value of the property taken in each theft was one thousand dollars (\$1000) or less; and that the property was taken, obtained, or withheld pursuant to one overall intent or plan to commit a series of thefts; then you are to add together the values of all the property taken, obtained, or withheld pursuant to that overall intent or plan. If the total value of such property is more than one thousand dollars (\$1000), then the crime is Grand Theft. The state has the burden of proving beyond a reasonable doubt that a theft is grand theft. If a theft is not grand theft, then it is petit theft.

Comment

I.C. § 18-2407(1)(b)(8).

State v. Lloyd, 103 Idaho 382, 647 P.2d 1254 (1982). The rule regarding aggregation of value only applies when several petit thefts are alleged to constitute a felony. The rule cannot be used to aggregate several felony thefts into one offense. State v. Gilbert, 112 Idaho 805, 726 P.2d 857 (Ct. App. 1987).

ICJI 555 THEFT-DIFFERENT FORMS POSSIBLE

INSTRUCTION NO.

There are different forms of Theft, depending upon the manner in which the theft was committed. The defendant [name] is charged [in Count ] with the theft of [description of property]. The state alleges that such theft was committed either by [type of theft] or by [type of theft]. If you are satisfied beyond a reasonable doubt and unanimously agree that the defendant committed the crime of Theft, you should find the defendant guilty. You are not required to agree as to which particular form of theft the defendant committed.

Comment

I.C. § 18-2401.

See *Schad v. Arizona*, 501 U.S. 624, 111 S.Ct. 2491, 115 L.Ed.2d 555 (1991). In that case, the defendant was found guilty of first degree murder, committed either as a premeditated homicide or as a homicide during the commission of a felony (robbery). The Court held that the jury need not agree on a single theory of guilt in order to convict the defendant.

ICJI 561 DRIVING A VEHICLE WITHOUT THE OWNER'S CONSENT

INSTRUCTION NO.

In order for the defendant to be guilty of Operating a Vehicle Without the Owner's Consent, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] operated a vehicle, namely [a] [an] [describe particular vehicle],
4. the defendant did so without the consent of the owner, and
5. with the intent to temporarily deprive the owner of possession of the vehicle.

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.

[Under Idaho law, [a] [an] [describe type of vehicle] is a vehicle.]

Comment

I.C. § 49-227; State v. Tomes, 118 Idaho 952, 801 P.2d 1303 (Ct. App. 1990).

The committee was of the opinion that the statutory language in IC § 49-227 "without intent to steal the vehicle" is subsumed by element 5 of the instruction.

IC § 49-227 provides that "vehicle shall include, but is not limited to vehicles defined in section IC § 49-123, boats, airplanes, snowmobiles, three and four wheel all terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles."



ICJI 561A DRIVING A VEHICLE WITHOUT THE OWNER'S CONSENT --  
FELONY

INSTRUCTION NO.

In order for the defendant to be guilty of Operating a Vehicle Without the Owner's Consent, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] operated a vehicle, namely [a] [an] [describe particular vehicle],
4. the defendant did so without the consent of the owner,
5. with the intent to temporarily deprive the owner of possession of the vehicle, and
6. [the damages caused to the vehicle as a result of these actions exceeded one thousand dollars (\$1,000)] [or] the value of property taken from the vehicle exceeded one thousand dollars (\$1,000)] [or] [a combination of the damages caused to the vehicle as a result of these actions and the value of property taken from the vehicle exceeded one thousand dollars (\$1,000)].

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.

[Under Idaho law, [a] [an] [describe type of vehicle] is a vehicle.]

Comment

I.C. § 49-227; State v. Tomes, 118 Idaho 952, 801 P.2d 1303 (Ct. App. 1990).

This instruction should be given when the defendant is charged with the felony of driving a vehicle without the owner's consent.

The committee was of the opinion that the statutory language in IC § 49-227 "without intent to steal the vehicle" is subsumed by element 5 of the instruction.

IC § 49-227 provides that "vehicle shall include, but is not limited to vehicles defined in section IC § 49-123, boats, airplanes, snowmobiles, three and four wheel all terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles."

ICJI 562 INTENT TO APPROPRIATE OR DEPRIVE DEFINED

INSTRUCTION NO.

The phrase "intent to deprive" means:

- a. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or
- b. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

The phrase "intent to appropriate" means:

- a. The intent to exercise control over property, or to aid someone other than the owner to exercise control over it, permanently or for so extended a period of time or under such circumstances as to acquire the major portion of its economic value or benefit; or
- b. The intent to dispose of the property for the benefit of oneself or someone other than the owner.

Comment

I.C. § 18-2402(1) & (3).

ICJI 570 OBTAIN DEFINED

INSTRUCTION NO.

[To "obtain" property means to bring about a transfer of an interest in or the possession of the property.]

[To "obtain" labor or services means to secure the performance of the labor or services.]

Comment

I.C. § 18-2402(4).

ICJI 571 OWNER DEFINED

INSTRUCTION NO.

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

Comment

I.C. § 18-2402(6).

ICJI 572 PERSON DEFINED

INSTRUCTION NO.

"Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho.

Comment

I.C. § 18-2402(7).

ICJI 573 PROPERTY DEFINED

INSTRUCTION NO.

"Property" means anything of value including labor or services.

Comment

I.C. § 18-2402(8).

"Property" as defined in the code is an expansive concept. Other specific definitions of property may be found in IC § 18-2402(8). As may be necessary, these specific examples can be inserted in the instruction.

Prior Idaho case law supports the proposition that the word "property" includes all valuable rights or interests which are protected by law. See *State v. Davis*, 81 Idaho 61, 336 P.2d 692 (1959).

ICJI 574 THEFT-DEFINED

INSTRUCTION NO.

A person steals property and commits theft when, with intent to deprive another of property or appropriate the same to the person or to a third party, such person wrongfully takes, obtains, or withholds such property from an owner thereof.

Comment

I.C. § 18-2403(1).

This instruction should be used in conjunction with an appropriate Burglary instruction only when Theft is not charged as a separate count. If an instruction defining "intent to deprive" is to be used also, see ICJI 562.



ICJI 575 VALUE DEFINED

INSTRUCTION NO.

The term "value" as used in these instructions means as follows:

[The market value of the property at the time and place of the crime,] [or] [if the market value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.]

[Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

[The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectable thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.]

[The value of a ticket or equivalent instrument which evidences a right to receive a transportation, entertainment or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon the value shall be deemed the price of such ticket or equivalent instrument which the issuer charges the general public.]

[The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.]

[When the value of property cannot be satisfactorily ascertained pursuant to any of the above standards its value shall be deemed to be one thousand dollars (\$1000) or less.]

[For the purpose of establishing a value of any written instrument, the interest of any owner or owners entitled to part or all of the property represented by such instrument, by reason of such instrument, may be shown, even if another owner may be named in the complaint, information or indictment.]

Comment

I.C. § 18-2402(a)(11).

Price tags are competent evidence of value for establishing grand larceny from a retail store. State v. McPhie, 104 Idaho 652, 662 P.2d 233 (1983).

ICJI 576 THEFT-DEFENSES

Comment

There are certain defenses and non-defenses to theft set forth in I.C. § 18-2406. The committee decided not to include any pattern instructions on these subjects. If any of such defenses or non-defenses are raised by the evidence, an appropriate instruction should be given. The state has the burden of disproving any defense beyond a reasonable doubt.

ICJI 577 THEFT DEFINITIONS

INSTRUCTION NO.

The phrase "intent to deprive" means:

- a. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or
- b. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

The phrase "intent to appropriate" means:

- a. The intent to exercise control over property, or to aid someone other than the owner to exercise control over it, permanently or for so extended a period of time or under such circumstances as to acquire the major portion of its economic value or benefit; or
- b. The intent to dispose of the property for the benefit of oneself or someone other than the owner.

To "obtain" property means to bring about a transfer of an interest in or the possession of the property.

To "obtain" labor or services means to secure the performance of the labor or services.

"Property" means anything of value.

"Property" means anything of value including labor or services.

An "owner" of property is any person who has a right to possession of such property superior to that of the defendant.

"Person" means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the state of Idaho.

The term "value" as used in these instructions means the market value of the property at the time and place of the alleged crime, or if the market value cannot be

satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the alleged crime.

Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectable thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

The value of a ticket or equivalent instrument which evidences a right to receive a transportation, entertainment or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon the value shall be deemed the price of such ticket or equivalent instrument which the issuer charges the general public.

The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument. When the value of property cannot be satisfactorily ascertained pursuant to any of the above standards its value shall be deemed to be [three hundred dollars (\$300)] [one thousand dollars (\$1,000)] or less.

For the purpose of establishing a value of any written instrument, the interest of any owner or owners entitled to part or all of the property represented by such instrument, by reason of such instrument, may be shown, even if another owner may be named in the complaint, information or indictment.

Comment

I.C. § 18-2402. Delete the definitions which do not apply to the particular case.

The committee assumed that the legislature overlooked amending I.C. § 18-2402(11)(c) when it increased the dollar limit for grand theft to one thousand dollars (\$1,000).

ICJI 578 WILLFUL CONCEALMENT

INSTRUCTION NO.

In order for the defendant to be guilty of Wilful Concealment, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully concealed the goods, wares, or merchandise of any store or merchant
4. while still upon the premises of such store or merchant, and
5. the defendant did so without authority.

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. § 18-4626.

ICJI 581 MISUSE OF PUBLIC MONEYS -- DEFINITIONS

INSTRUCTION NO.

["Financial transaction card" means: (1) any instrument or device known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the cardholder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or (2) any instrument or device used in providing the cardholder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or traveler's checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.]

["Financial transaction card account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.]

["Governmental entity" means the State of Idaho, including all branches, departments, divisions, agencies, boards, commissions and other governmental bodies of the state; and counties, cities, districts and all other political subdivisions of the State of Idaho.]

["Public officer" means any person holding public office of a governmental entity: {1} as an elected official, by virtue of an election process, including persons appointed to a vacant elected office; or (2) as an appointed official by virtue of a formal appointment as required by law.]



["Public employee" means any person who is not a public officer and is employed by a governmental entity.]

["Public moneys" includes all bonds and evidences of indebtedness, fees, fines, forfeitures, and all other moneys belonging to or in the charge of a governmental entity or held by a public officer or public employee in his official capacity, and all financial transaction cards, financial transaction card account numbers and credit accounts issued to or for the benefit of the governmental entity.]

Comment

I.C. § 18-5703.

ICJI 582 MISUSE OF PUBLIC MONEYS - ADDITIONAL FINDINGS

INSTRUCTION NO.

If you find the defendant guilty of Misuse of Public Moneys, you must next consider whether the state has proven the following:

[whether [name of defendant], at the time of the offense, was charged with the receipt, safekeeping or disbursement of public moneys[.]]

[and]

[whether the amount of public moneys misused was at least \$300.]

You must indicate on the verdict form whether or not the above circumstances have been proven beyond a reasonable doubt.

Comment

I.C. § 18-5702.

ICJI 583 MISUSE OF PUBLIC MONEYS - PRIOR CONVICTION

INSTRUCTION NO.

Having found the defendant guilty of Misuse of Public Moneys, you must next decide whether the defendant previously has pled guilty to or been found guilty of Misuse of Public Moneys. The state alleges that the defendant [pled guilty to] [was found guilty of] a violation of IC § 18-5701, Misuse of Public Moneys, in [name of county], Idaho, Case No.\_\_\_\_\_.

The state must prove this event beyond a reasonable doubt.

Comment

I.C. § 18-5702.