**ICJI 1708 Aggravating Circumstances**

The statutory aggravating [circumstance is simply an allegation; it is not evidence.] [circumstances are simply allegations; they are not evidence.] You should not be influenced or prejudiced for or against the defendant because the State is seeking the death penalty.

The State has alleged the following statutory aggravating circumstance[s]:

[a] The defendant was previously convicted of another murder.

[b] At the time the murder was committed, the defendant also committed another murder.

[c] The defendant knowingly created a great risk of death to many persons.

[d] The murder was committed for remuneration or the promise of remuneration or the defendant employed another to commit the murder for remuneration or the promise of remuneration.

[e] The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity.

[f] By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

[g] The murder was committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life.

[h] The murder was committed in the perpetration of, or attempt to perpetrate, lewd and lascivious conduct with a minor, sexual abuse of a child under sixteen (16) years of age, ritualized abuse of a child, sexual exploitation of a child, sexual battery of a minor child sixteen (16) or seventeen (17) years of age, or forcible sexual penetration by use of a foreign object, and the defendant killed, intended a killing, or acted with reckless indifference to human life.

[i] The defendant, by [his] [her] conduct, whether such conduct was before, during or after the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

[j] The murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty or because of the victim’s former or present official status.

[k] The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding.

If, after considering all the evidence, you unanimously find that one [or more of the] aggravating circumstances exist[s] beyond a reasonable doubt, you must indicate on the special verdict form by specifically stating what aggravating circumstance [or circumstances] exist[s].

If, after considering all the evidence, you unanimously find that there is a reasonable doubt about the existence of a statutory aggravating circumstance, or you cannot unanimously agree on the existence of a statutory aggravating circumstance, you must indicate on the special verdict form that the State has not proven the aggravating circumstance. You must indicate this finding by checking the appropriate line next to such aggravating circumstance [or circumstances] on the verdict form.

Your presiding juror must sign the verdict form.

Comment

I.C. § 19-2515(7)–(9).

The trial judge should list only the aggravating circumstance or circumstances that the defendant was notified of prior to trial. Use the applicable bracketed language.