**ICJI 1713 HAC Instruction**

You have been instructed that the State has alleged the statutory aggravating circumstance that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. In order to find the defendant guilty of this statutory aggravating circumstance, you must unanimously find, beyond a reasonable doubt, that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity.

The terms especially “heinous,” “atrocious,” or “cruel,” are considered separately; but in combination with “manifesting exceptional depravity.”

The terms heinous, atrocious, or cruel are intended to refer to those first-degree murders where the actual commission of the first-degree murder was accompanied by such additional acts as to set the crime apart from the norm of first-degree murders.

A murder is “heinous” if it is extremely wicked or shockingly evil.

“Atrocious” means outrageously wicked and vile.

“Cruel” means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

This statutory aggravating circumstance does not exist unless the murder was especially heinous, especially atrocious, or especially cruel, and such heinousness, atrociousness or cruelty manifested exceptional depravity. It might be thought that every murder involves depravity. However, exceptional depravity exists only where depravity is apparent to such an extent as to obviously offend all standards of morality and intelligence. The terms “especially heinous manifesting exceptional depravity,” “especially atrocious manifesting exceptional depravity,” or “especially cruel manifesting exceptional depravity” focus upon a defendant’s state of mind at the time of the offense, as reflected by [his] [her] words and acts.

Comment

This instruction should be given if the State alleges the heinous, atrocious or cruel statutory aggravator set forth in I.C. § 19-2515(9)(e).

*State v. Hall*, 163 Idaho 744, 419 P.3d 1042 (2017); *State v. Osborn*, 102 Idaho 405, 631 P.2d 187 (1981); *Walton v. Arizona*, 497 U.S. 639, 110 S.Ct. 3047, 111 L. Ed 2d 511 (1990) overruled on other grounds, *Ring v. Arizona*, 536 U.S. 584 (122 S.Ct 2428, 153 L.Ed 2d 556 (2002); *Arave v. Creech*, 507 U.S. 463, 113 S.Ct. 1534, 123 L.Ed 2d 188 (1993).