**ICJI 1717 Propensity**

You have been instructed that the State has alleged the statutory aggravating circumstance that 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. In order to find the defendant guilty of this statutory aggravating circumstance, you must unanimously find, beyond a reasonable doubt, that 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.

The phrase “exhibited a propensity to commit murder which will probably constitute a continuing threat to society” means conduct showing that the defendant is more likely than not to be a continuing threat to society. You may consider conduct that occurred before, during, or after the commission of the murder you have already found the defendant guilty of in this case. However, a finding that the defendant has a propensity to commit murder which will probably constitute a continuing threat to society cannot be based solely upon the fact that you found the defendant guilty of murder. In order for a person to have a propensity to commit murder, the person must be a willing, predisposed killer, a killer who tends toward destroying the life of another, one who kills with less than the normal amount of provocation. Propensity requires a proclivity, a susceptibility, and even an affinity toward committing the act of murder.

Comment

This instruction should be given when the State alleges the propensity statutory aggravator set forth in I.C. § 19-2515(9)(i). The conduct supporting a propensity to commit murder does not require a conviction in order for a jury to consider it under this statutory aggravating circumstance. Use the applicable bracketed language.

*Dunlap v. State*, 159 Idaho 280, 360 P.3d 289 (2015); *State v. Dunlap*, 125 Idaho 530, 873 P.2d 784 (1993); *State v. Creech*, 105 Idaho 362, 670 P.2d 463 (1983).