

ICJI 801 NO FUNDS CHECK

INSTRUCTION NO.

In order for the defendant to be guilty of Issuing a Check Without Funds, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. [made, drew, uttered, or delivered] [or] [caused to be made, drawn, uttered, or delivered] a [check] [draft] [money order] to [name of person or entity],
5. in doing so the defendant acted willfully
6. and acted with an intent to defraud [name of person or entity], and
7. when doing so, the defendant had no money in or credit with the bank upon which the [check] [draft] [order] was drawn and
8. knew that the defendant had no money in or credit with such bank for its payment.

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. § 18-3106(a).

ICJI 802 INSUFFICIENT FUNDS CHECK

INSTRUCTION NO.

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

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. [made, drew, uttered or delivered] [or] [caused to be made, drawn, uttered or delivered] a [check] [draft] [money order] [for \$250.00 or more] [a series of [checks] [drafts] [money orders] to [name of person[s] or entity[ies]], [as part of a common scheme or plan, each of which was less than \$250.00 but added together result in a sum of \$250.00 or more],
5. in doing so the defendant acted willfully
6. and acted with an intent to defraud [name of person or entity], and
7. when doing so, the defendant had some but not enough money in or credit with the bank for the full payment of the [check(s)] [draft(s)] [money order(s)] and
8. the defendant knew that the money in or credit with such bank was not enough for full payment of the [check(s)] [draft(s)] [money order(s)].

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. §§ 18-3106(b) & 18-3106(c). If the charge is a violation of subsection (c), the phrase "for \$250.00 or more" should be deleted from paragraph 4.

A subsequent conviction of issuing check with insufficient funds under \$250 is subject to an enhanced penalty that would require a bifurcated trial. 18-3106(c)

ICJI 803 INTENT TO DEFRAUD DEFINED

INSTRUCTION NO.

An intent to defraud is an intent to deceive another person for the purpose of gaining some material advantage over that person or to induce that person to part with property or to alter that person's position to the injury or risk of the person, and to accomplish that purpose by some false statement, false representation of fact, wrongful concealment or suppression of truth, or by any other artifice or act designed to deceive.

Comment

See *State v. May*, 93 Idaho 343, 461 P.2d 126 (1969).

ICJI 804 CREDIT DEFINED

INSTRUCTION NO.

The word "credit," as used in these instructions, means an arrangement or understanding by the drawer or maker of the check, draft, or order with the bank or other financial depository upon which the instrument is drawn, for the payment of such check, draft, or order.

ICJI 805 INTENT TO DEFRAUD—ACTUAL LOSS NOT NECESSARY

INSTRUCTION NO.

The intent to defraud must exist at the time the [check] [draft] [money order] is made, drawn, uttered, or delivered. It is not necessary to complete the crime that any person be actually defrauded or suffer a loss by reason of the issuance or delivery of such [check] [draft] [money order].

Comment

State v. Campbell, 70 Idaho 408, 219 P.2d 956 (1950).

ICJI 810 FORGERY

INSTRUCTION NO.

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

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. with the intent to defraud [name of person or entity]
5. [falsely made, altered, forged or counterfeited a writing, seal or handwriting of another] [uttered, published, passed, or attempted to pass as true and genuine a false, altered, forged, or counterfeited writing knowing the same to be false, altered, forged, or counterfeited, with the intent to prejudice, damage, or defraud any person] [altered, corrupted, or falsified any record of any will, codicil, conveyance, or other instrument, the record of which is, by law, evidence, or any record of any judgment of a court, or the return of any officer to any process of any court].

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. § 18-3601.

ICJI 811 FORGERY OF A FINANCIAL TRANSACTION CARD

INSTRUCTION NO.

In order for the defendant to be guilty of Forgery of a Financial Transaction Card, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. with the intent to defraud
5. [counterfeited, falsely made, embossed, or encoded magnetically or electronically any financial transaction card.]

[or]

[used the financial transaction card account number or personal identification code of a card holder in the creation of a fictitious or counterfeit credit card sales draft, signed the name of another or a fictitious name to a financial transaction card, sales slip, sales draft, credit card sales draft, or an instrument for the payment of money which evidenced a financial transaction card transaction.]

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. § 18-3123.

ICJI 820 FRAUDULENT USE OF A FINANCIAL TRANSACTION CARD

INSTRUCTION NO.

In order for the defendant to be guilty of Fraudulent Use of a Financial Transaction Card, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. with the intent to defraud

[5. used a financial transaction card to knowingly and willfully exceed the actual balance of the demand deposit account or time deposit account.]

[or]

[5. used a financial transaction card to willfully exceed an authorized credit line in the amount of one thousand dollars (\$1,000) or more, or fifty per cent (50%) of such authorized credit line, whichever is greater.]

[or]

[5. willfully deposited into his or her account or any other account by means of an automatic banking device, any false, forged, fictitious, altered or counterfeit check draft, money order, or any other such document.]

[or]

[5. knowingly sold or attempted to sell credit cards sales drafts to an authorized credit merchant or any other person or organization, for any consideration whether at a discount or otherwise, or presented or cause to be presented to the issuer or an authorized credit card merchant, for payment or collection, any credit card sales draft, or purchased or attempted to purchase any credit card sales draft for presentation to the issuer or an authorized credit merchant for payment or collection if:

- a) such draft was counterfeit or fictitious, or
- b) the purported sale evidenced by such credit card sales draft did not take place, or

c) the purported sale was not authorized by the card holder, or

d) the items or services purported to be sold as evidenced by such credit card sales draft were not delivered or rendered to the card holder or person intended to receive them, or

e) if purportedly delivered or rendered, such goods or service were of materially lesser value or quality from that intended by the purchaser, or were materially different from goods or services represented by the seller or his agent to the purchaser, or had substantial discrepancies from goods or services impliedly represented by the purchase price when compared with the actual goods or services purportedly delivered or rendered.]

[or]

[5. knowingly kept or maintained in any manner carbon or other impressions or copies of credit card sales drafts, and used such impressions or copies for the purpose of creating any fictitious or counterfeit credit sales draft.]

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.

I.C. § 18-3124.

ICJI 820A FRAUDULENT USE OF A FINANCIAL TRANSACTION CARD -
ADDITIONAL FINDING

INSTRUCTION NO.

If you find that the defendant is guilty of Fraudulent Use of a Financial Transaction Card, you must next consider whether the state has proven that the state has proven that the retail value of the goods obtained or attempted to be obtained through the offense is greater than \$300. You must indicate on the verdict form whether or not this has been proven beyond a reasonable doubt.

Comment

I.C. § 18-3128.

ICJI 821 FINANCIAL TRANSACTION CARD DEFINED

INSTRUCTION NO.

As used in these instructions, "financial transaction card" or "FTC" means 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 card holder 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 card holder 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 any instrument or device used in providing the card holder 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 travelers 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" or "FTC number" or "FTC 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.

Comment

I.C. § 18-3122(6) and (7).

ICJI 822 CRIMINAL POSSESSION OF A FINANCIAL TRANSACTION
CARD OR FINANCIAL TRANSACTION ACCOUNT NUMBER

INSTRUCTION NO.

In order for the defendant to be guilty of Criminal Possession of a Financial Transaction Card or Financial Transaction Account Number, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]

[4. [acquired an FTC or FTC number from another without the consent of the card holder or the issuer,] [or] [received an FTC or FTC number with the knowledge that it has been acquired without the consent of the cardholder or issuer,]

5. with the intent [to use to defraud,] [or] [to sell, or to transfer the FTC or FTC number to another person with the knowledge that it is to be used to defraud];]

[or]

[4. acquired an FTC or FTC number that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the card holder, and to retain possession

5. with the intent [to use to defraud] [or] [to sell or transfer to another person with the knowledge that it is to be used to defraud];]

[or]

[4. with the intent to defraud

5. knowingly possessed a false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or any FTC account number;]

[or]

[4. with the intent to defraud

5. knowingly [obtained or attempted to obtain credit] [or] [purchased or attempted to purchase any goods, property or service], by use of any false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or FTC account number;]

[or]

[4. with the intent to defraud
5. knowingly [produced to another person] [or]
[procured] a false, fictitious, counterfeit, revoked,
expired or fraudulently obtained FTC or any FTC account
number;]

[or]

[4. with the intent to defraud
5. while making an application for an FTC to an
issuer
6. knowingly [made or caused to be made, a false
written or oral statement or representation respecting his
name, personal identifying information, occupation,
financial condition, assets,] [or] [materially undervalued
any indebtedness]
7. for the purpose of influencing the issuer to issue
an FTC.]

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. § 18-3125.

ICJI 830 COMPUTER CRIME--FELONY

INSTRUCTION NO.

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

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
- [4. knowingly [accessed] [used] [or] [attempted to access or use] any computer, computer system, computer network, or any part thereof for the purpose of [devising or executing any scheme or artifice to defraud] [obtaining [money] [property] [or] [services] by means of false or fraudulent pretenses, representations, or promises] [or] [committing theft] [or]
- [4. knowingly and without authorization [altered] [damaged] [or] [destroyed] any computer, computer system, or computer network or any computer software, program, documentation, or data contained in such computer, computer system, or computer network.]

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. §§ 18-2202(1) & 18-2202(2). See Comment to ICJI 831, regarding I.C. § 18-2201.

ICJI 831 COMPUTER CRIME—MISDEMEANOR

INSTRUCTION NO.

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

1. On or about [date]
2. in the state of Idaho
3. the defendant [name]
4. knowingly and without authorization [used] [accessed] [or] [attempted to access or use] any computer, computer system, or computer network or any computer software, program, documentation or data contained in such computer, computer system, or computer network.

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. § 18–2202(3). This code section parenthetically refers to I.C. § 18–2201 for definitional descriptions of "computer," "computer system" and "computer network." Those terms as defined in I.C. § 18–2201, are set forth in ICJI 832.

ICJI 832 COMPUTER CRIMES—DEFINITIONS

INSTRUCTION NO.

As used in these instructions:

To "access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system, or computer network.

"Computer" means, but is not limited to, an electronic device which performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, software, or communication facilities which are connected or related to such a device in a system or network.

"Computer network" means, but is not limited to, the interconnection of communication lines (including microwave or other means of electronic communication) with a computer through remote terminals, or a complex consisting of two (2) or more interconnected computers.

"Computer program" means, but is not limited to, a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner deigned to provide appropriate products from such computer system.

"Computer software" means, but is not limited to, computer programs, procedures, and associated documentation concerned with the operation of a computer system.

"Computer system" means, but is not limited to, a set of related, connected or unconnected, computer equipment, devices, and software.

"Property" includes, but is not limited to, financial instruments, information, including electronically produced data, and computer software and programs in either machine or human readable form, and any other tangible or intangible item of value. "Services" include, but are not limited to, computer time, data processing, and storage functions.

Comment

I.C. § 18-2201.