

ICJI 1000 DRIVING WHILE UNDER THE INFLUENCE

INSTRUCTION NO.

In order for the defendant to be guilty of Driving Under the Influence the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], [drove] [or] [was in actual physical control of]
4. a [commercial] motor vehicle
5. upon a highway, street or bridge or upon public or private property open to the public,
6. [while under the influence of (a combination of) (alcohol) (or) (drugs) (or) (an intoxicating substance).]

[or]

[while having an alcohol concentration of 0.02 or more as shown by analysis of the defendant's (blood) (urine) (breath), and the defendant was under the age of 21 years.]

[or]

[while having an alcohol concentration of (0.04) (0.08) (0.10) (0.20) or more as shown by analysis of the defendant's (blood) (urine)(breath).]

[or]

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. § 18-8004.

State v. Andrus, 118 Idaho 711, 800 P.2d 107 (Ct. App. 1990); *State v. Hartwig*, 112 Idaho 370, 732 P.2d 339 (Ct. App. 1987); *State v. Cheney*, 116 Idaho 917, 782 P.2d 40 (Ct. App. 1989); *Schad v. Arizona*, 501 U.S.624 (1991).

The State of Idaho has jurisdiction over an enrolled member of an Indian tribe for the offense of driving while under the influence of alcohol on public roads and highways within an Indian reservation located in the State of Idaho. *State v. Warden*, 127 Idaho 763, 906 P.2d 133 (1995).

Because of an amendment to Idaho Code § 18-8004 that was effective on July 1, 2002, the following two alternatives

for paragraph 6 could only apply to crimes committed prior to that date.

[while under the influence of a combination of alcohol and any drug] [or] [non-narcotic drugs] to a degree which rendered the defendant incapable of safely operating a motor vehicle.]

[or]

[while being an habitual user of or under the influence of any narcotic drug.]

ICJI 1002 DUI—NOT A DEFENSE TO HAVE LAWFULLY USED DRUGS

INSTRUCTION NO.

It is not a defense to the charge of Operating a Motor Vehicle Under the Influence of any drug or a combination of alcohol and any drug that the person charged is or has been entitled to use such drug under the laws of this state.

Comment

I.C. § 18-8004(5).

ICJI 1003 ACTUAL PHYSICAL CONTROL DEFINED

INSTRUCTION NO.

The phrase "actual physical control," means being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

Comment

I.C. §§ 18-8004(6) & 49-102(4).

The driver's subjective intent with regard to driving the vehicle is immaterial to the "actual physical control" analysis. *State v. Woolf*, 120 Idaho 21, 813 P.2d 360 (Ct. App. 1991).

ICJI 1004 ALCOHOL DEFINED

INSTRUCTION NO.

The term "alcohol" includes any liquid or solid material which contains ethanol, also known as ethyl alcohol.

Comment

I.C. §§23-105 & 23-1001(a).

ICJI 1005 COMMERCIAL MOTOR VEHICLE DEFINED

INSTRUCTION NO.

The phrase "commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property if the motor vehicle

[has a gross vehicle weight rating or gross combination weight rating of twenty-six thousand and one (26,001) or more pounds.]

[or]

[is designed to transport sixteen (16) or more persons, including the driver.]

[or]

[is of any size and is transporting materials found to be hazardous for the purposes of the hazardous material transportation act and which is required to be placarded.]

Comment

I.C. § 18-8004 does not include a definition of "commercial motor vehicle." This instruction comes from the definition in I.C. § 49-123(1)(c), which defines "commercial motor vehicle" for the purposes of chapter 3 of title 49 (driver licenses). This instruction does not include the additional definition of "commercial motor vehicle" in I.C. § 49-123(1)(c) for the purposes of chapter 4 of title 49 (motor vehicle registration). The committee concluded that the definition relating to driver's licenses was the one intended by the legislature. See I.C. § 49-335(1)(b) which authorizes the department to disqualify from operating a commercial motor vehicle the holder of a class A, B, or C license if he is convicted of operating a commercial motor vehicle while having an alcohol concentration of 0.04 or more.

ICJI 1006 DEGREE OF INTOXICATION NOT NECESSARY

INSTRUCTION NO.

To prove that someone was under the influence of [alcohol] [or] [narcotic drugs] [or] [any intoxicating substance], it is not necessary that any particular degree or state of intoxication be shown. Rather, the state must show that the defendant [had consumed sufficient alcohol] [and/or] [had used enough of (any drug(s)) (or) (intoxicating substance(s)) to influence or affect the defendant's ability to drive the motor vehicle.

Comment

State v. Gleason, 123 Idaho 62, 844 P.2d 691 (1992); *State v. Glanzman*, 69 Idaho 46, 202 P.2d 407 (1949); *State v. Andrus*, 118 Idaho 711, 800 P.2d 107 (Ct. App. 1990); *State v. Bailey*, 117 Idaho 941, 792 P.2d 966 (Ct. App. 1990).

ICJI 1007 REFUSAL TO TAKE TEST

Comment

Evidence that a defendant refused to take a BAC test is admissible. *South Dakota v. Neville*, 459 U.S. 553 (1983); *State v. Bock*, 80 Idaho 296, 328 P.2d 1065 (1958). However, the committee recommends that no instruction be given to the jury concerning this subject to avoid a comment by the court on the effect of such evidence.

ICJI 1008 DUI ENHANCEMENT—PRIOR CONVICTIONS OR GUILTY PLEAS

INSTRUCTION NO.

Having found the defendant guilty of Driving Under the Influence, you must next decide whether the defendant has pled guilty to or was found guilty of Driving Under the Influence within the last ten years. The state alleges:

1. The defendant [pled guilty to] [was found guilty of] a violation of IC § 18-8004, Driving Under the Influence in [name of county], Idaho, Case No. [.][, and

2. The defendant [pled guilty to] [was found guilty of] a violation of IC § 18-8004, Driving Under the Influence in [name of county], Idaho, Case No. [.]

[3. (Add other prior offenses).]

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.

[or]

Having found the defendant guilty of Driving Under the Influence, you must next decide whether the defendant has pled guilty to or was found guilty of [felony Driving Under the Influence] [Aggravated Driving Under the Influence] [or] [Vehicular Manslaughter] within the last fifteen years. The state alleges:

1. The defendant [pled guilty to] [was found guilty of] a violation of IC § 18-8004, [felony Driving Under the Influence] [Aggravated Driving Under the Influence] [or] [Vehicular Manslaughter] in [name of county], Idaho, Case No. _____[.]

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.

[or]

Having found the defendant guilty of Driving Under the Influence, you must next decide whether the defendant has pled guilty to or was found guilty of Driving Under the Influence within the last fifteen years. The state alleges:

1. The defendant [pled guilty to] [was found guilty of] a violation of IC § 18-8004C, Driving Under the Influence, in [name of county], Idaho, Case No. _____, and at the time of the violation the defendant had an alcohol concentration of .20 or more as shown by analysis of defendant's (blood) (urine) (breath).

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. §§ 18-8005(4), 18-8005(6) and 18-8005(9).

State v. Johnson, 86 Idaho 51, 383 P2d 326 (1963), held that a persistent violator charge should be stated in a two-part information. The first part should state the particular offense with which the defendant is charged, and be signed at the end of the page by the prosecutor. The second part, or page, should allege former convictions, and be separable from the first part. It should be signed separately by the prosecutor. The entire information should be read to the accused at arraignment. However, when the jury is informed of the charge only the first part is read, then, after, and depending upon the verdict on part one, the second part is read, and the jury deliberates further.

State v. Mesenbrink, 115 Idaho 850, 771 P.2d 514 (1989), in dicta, adopts this procedure for enhanced DUI's. See also *State v. Bever*, 118 Idaho 80, 794 P.2d 1136 (1990); *State v. Craig*, 117 Idaho 983, 793 P.2d 215 (1990).

Instructing jury that the Intoxilyzer 5000 had been approved by the State of Idaho held to be erroneous because such an instruction commented on the legal determination of adequate foundation which is not properly an issue before the jury and implied the test was accurate. *State v. Winson*, 129 Idaho 298, 923 P.2d 1005 (Ct. App. 1996).

See ICJI 1009 for special verdict instruction.

ICJI 1009 DUI SPECIAL VERDICT INSTRUCTION—ENHANCEMENT

INSTRUCTION NO.

In this portion of the case you will return a verdict, consisting of a [series of] question(s) you should answer. Since the explanations on the form which you will have are part of my instructions to you, I will read the body of the verdict form to you.

"We, the Jury, duly impaneled and sworn to try the above entitled action, unanimously answer the question(s) submitted to us in this verdict as follows:

QUESTION NO. 1: Within the past five (5) years [did the defendant plead guilty to] [or] [was the defendant found guilty of] a violation of IC § 18-8004, Driving Under the Influence, in [name of county], Idaho, Case No. _____?

ANSWER: YES _____ NO _____

[QUESTION NO. 2: Within the past five (5) years [did the defendant plead guilty to] [or] [was the defendant found guilty of] a violation of IC § 18-8004, Driving Under the Influence, in [name of county], Idaho, Case No. _____?

ANSWER: YES _____ NO _____]

[QUESTION NO. 3: (Same as Nos. 1 and 2 with regard to any other prior offenses)

ANSWER: YES _____ NO _____]

[QUESTION NO. 1: Within the past ten (10) years, [did the defendant plead guilty to] [was the defendant found guilty of] [felony Driving Under the Influence] [Aggravated Driving Under the Influence] [or] [Vehicular Manslaughter] in [name of county], Idaho, Case No. _____?

ANSWER: YES _____ NO _____]

[QUESTION NO. 1: Within the past five (5) years [did the defendant plead guilty to] [or] [was the defendant found guilty of] Driving Under the Influence, in [name of county], Idaho, Case No. _____, and at the time of the violation the defendant had an alcohol concentration of .20

or more as shown by analysis of defendant's (blood) (urine) (breath)?

ANSWER: YES _____ NO _____]

Once you have answered the questions, your presiding juror should date and sign the verdict form and advise the bailiff that you have reached a verdict.

ICJI 1010 AGGRAVATED DUI

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Driving Under the Influence the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], [drove] [or] [was in actual physical control of]
4. a [commercial] motor vehicle
5. upon a highway, street or bridge or upon public or private property open to the public,
6. [either] [while under the influence of (alcohol) (narcotic drugs) (an intoxicating substance)] [or] [while having an alcohol concentration of 0.10 or more as shown by analysis of defendant's (blood) (urine) (breath)], and
7. the defendant's operation of the motor vehicle caused great bodily harm, permanent disability or permanent disfigurement
8. to any person other than the defendant.

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. § 18-8006(1); *State v. Nelson*, 119 Idaho 444, 807 P.2d 1282 (Ct. App. 1991). The committee concluded that subpart (7) sufficiently addresses "caused" without further definition.

ICJI 1020 DRIVING WITHOUT PRIVILEGES

INSTRUCTION NO.

In order for the defendant to be guilty of Driving Without Privileges, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name], [drove] [or] [was in actual physical control of]
4. a motor vehicle
5. upon a highway
6. while the defendant's driver's license, driving privileges or permit to drive was
7. revoked, disqualified or suspended in any state or jurisdiction, and
8. the defendant had knowledge of such revocation, disqualification or suspension.

If you find 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. § 18-8001; *State v. Cheney*, 116 Idaho 917, 782 P.2d 40 (Ct. App. 1989).

The committee construes the statutory language in IC § 18-8001(1) "highways of this state" to mean highways in this state rather than highways belonging to the state. A minority of the committee is of the opinion that the words "of this state" are neither mere surplusage nor to be accorded other than their usual meaning.

A definition of "actual physical control" is found in ICJI 1003.

Under the pleading theory, driving with an invalid license is an included offense of driving without privileges. *State v. Matalamaki*, 139 Idaho 341, 79 P.3d 162 (Ct. App. 2003).

ICJI 1021 DWP-HIGHWAY DEFINED

INSTRUCTION NO.

The term "highway" means the same as "street" and includes public roads, alleys, bridges and adjacent sidewalks and rights-of-way.

Comment

Various definitions of "highway" can be found in I.C. §§ 40-109(5), 40-117, & 49-109(6). In a particular case the definition may need to be expanded.

See I.C. § 40-109(5) for the 5-year rule applicable to county roads for use in those rare cases it may apply.

ICJI 1022 DWP-DEFINITION OF KNOWLEDGE

INSTRUCTION NO.

A person has knowledge that the person's license, driving privileges or permit to drive is revoked, disqualified or suspended when:

(a) the person has actual knowledge of the revocation, disqualification or suspension of the person's license, driving privileges or permit to drive; or

(b) the person has received oral or written notice from a verified, authorized source that the person's license, driving privileges or permit to drive was revoked, disqualified or suspended; or

(c) notice of the suspension, disqualification or revocation of the person's license, driving privileges or permit to drive was mailed by certified mail to the person's address as shown on the citation which resulted in the suspension, disqualification or revocation, and if such notice was returned it was remailed to the person's address as shown in the department records and the person failed to receive the notice or learn of its contents as a result of the person's own unreasonable, intentional or negligent conduct; or

(d) the person has knowledge of, or a reasonable person in the person's situation exercising reasonable diligence would have knowledge of, the existence of facts or circumstances which, under Idaho law, might have caused the revocation, disqualification or suspension of the person's license, driving privileges or permit to drive.

Comment

I.C. § 18-8001(2); *State v. Bird*, 119 Idaho 196, 804 P.2d 925 (Ct. App. 1991); *State v. Quenzer*, 112 Idaho 756, 735 P.2d 1067 (Ct. App. 1987).

See ICJI 341 for a definition of negligence, necessary due to the use of the word "negligent" in the definition of "knowledge" in I.C. § 18-8001(2)(c).

INSTRUCTION NO.

Having found the defendant guilty of Driving Without Privileges, you must next decide whether the Defendant has pled guilty to or was found guilty of Driving Without Privileges within the last five years. The state alleges:

1. The defendant [pled guilty to] [was found guilty of] a violation of IC § 18-8001, Driving Without Privileges in [name of county], Idaho, Case No. [.][, and

2. The defendant [pled guilty to] [was found guilty of] a violation of IC § 18-8001, Driving Without Privileges in [name of county], Idaho, Case No. [.]

[3. (Add other prior offenses).]

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. §§ 18-8001(4)&(5).

State v. Johnson, 86 Idaho 51, 383 P2d 326 (1963), held that a persistent violator charge should be stated in a two-part information. The first part should state the particular offense with which the defendant is charged, and be signed at the end of the page by the prosecutor. The second part, or page, should allege former convictions, and be separable from the first part. It should be signed separately by the prosecutor. The entire information should be read to the accused at arraignment. However, when the jury is informed of the charge only the first part is read, then, after, and depending upon the verdict on part one, the second part is read, and the jury deliberates further.

See *State v. Bever*, 118 Idaho 80, 794 P.2d 1136 (1990); *State v. Craig*, 117 Idaho 983, 793 P.2d 215 (1990).

See ICJI 1024 for special verdict instruction.

ICJI 1024 DWP SPECIAL VERDICT INSTRUCTION—ENHANCEMENT

INSTRUCTION NO.

In this portion of the case you will return a verdict, consisting of a [series of] question(s) you should answer. Since the explanations on the form which you will have are part of my instructions to you, I will read the body of the verdict form to you.

"We, the Jury, duly impaneled and sworn to try the above entitled action, unanimously answer the question(s) submitted to us in this verdict as follows:

QUESTION NO. 1: Within the past five (5) years [did the defendant plead guilty to] [or] [was the defendant found guilty of] a violation of IC § 18-8001, Driving without Privileges, in [name of county], Idaho, Case No. ?

ANSWER: YES _____ NO _____

[QUESTION NO. 2: Within the past five (5) years [did the defendant plead guilty to] [or] [was the defendant found guilty of] a violation of IC § 18-8001, Driving without Privileges, in [name of county], Idaho, Case No. ?

ANSWER: YES _____ NO _____]"

Once you have answered the questions, your presiding juror should date and sign the verdict form and advise the bailiff that you have reached a verdict.

ICJI 1030 RECKLESS DRIVING

INSTRUCTION NO.

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

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] drove or was in actual physical control of a vehicle
4. upon a highway, or upon public or private property open to the public, and
5. [the defendant drove the vehicle carelessly or heedlessly or without due caution and circumspection and at a speed or in a manner as to endanger or be likely to endanger any person or property] [or] [the defendant passed when there was a line in [his] [her] lane indicating a sight distance restriction].

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. § 49-1401(1).

If the defendant is charged with "second offense" reckless driving, I.C. § 49-1401(2), that issue should be presented in a bifurcated proceeding as provided in ICJI 1601 (with appropriate modifications).

ICJI 1031 INATTENTIVE DRIVING

INSTRUCTION NO.

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

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] drove or was in actual physical control of a vehicle
4. upon a highway, or upon public or private property open to the public, and
5. the defendant drove the vehicle in an inattentive, careless or imprudent manner, in light of the circumstances then existing, rather than heedless or wanton, or drove in a manner where the danger to persons or property from the defendant's conduct was slight.

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. § 49-1401(3).

ICJI 1032 FELONY ELUDING A PEACE OFFICER

INSTRUCTION NO.

In order for the defendant to be guilty of Felony Eluding a Peace Officer, the state must prove each of the following:

1. On or about [date]
 2. in the state of Idaho,
 3. while driving a motor vehicle,
 4. the defendant [name] wilfully fled or attempted to elude
 5. a pursuing police vehicle
 6. when a peace officer had given the defendant a visual or audible signal to bring the defendant's vehicle to a stop, and
 7. [Traveled in excess of thirty (30) miles per hour above the posted speed limit.]
- [or]
- [Caused damage to the property of another or caused bodily injury to another.]
- [or]
- [Drove the vehicle in a manner as to endanger or be likely to endanger another person or another person's property.]
- [or]
- [Left the state of Idaho.]

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 signal to stop must be given by emergency lights or siren which a reasonable person knew or should have known was intended to bring the pursued vehicle to a stop.

Comment

I.C. § 49-1404(2).

ICJI 1033 ELUDING A PEACE OFFICER

INSTRUCTION NO.

In order for the defendant to be guilty of Eluding a Peace Officer, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho,
3. while driving a motor vehicle,
4. the defendant [name] wilfully fled or attempted to elude
5. a pursuing police vehicle
6. when a peace officer had given the defendant a visual or audible signal to bring the defendant's vehicle to a stop, and

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 signal to stop must be given by emergency lights or siren which a reasonable person knew or should have known was intended to bring the pursued vehicle to a stop.

Comment

I.C. § 49-1404(1). The statute expressly provides that the emergency lights or siren need not conform to the standards for decibel ratings or light visibility specified in section 49-623(3).

The signal to stop must be given by emergency lights or siren. *State v. Bedard*, 120 Idaho 869, 820 P.2d 1226 (1991).

ICJI 1035 LEAVING SCENE OF INJURY ACCIDENT

INSTRUCTION NO.

In order for the defendant to be guilty of Leaving the Scene of an Injury Accident, the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] was driving a motor vehicle which was involved in an accident
4. either upon public or private property open to the public,
5. such accident resulted in [injury to] [or] [the death of] a person,
6. the defendant knew or had reason to know that the accident had resulted in [injury to] [or] [the death of] a person, and
7. either the defendant failed to immediately stop [his] [her] vehicle at the scene of the accident or as close to the scene as possible without obstructing traffic more than necessary, or the defendant failed to remain at the scene of the accident until [he] [she] had done the following:
 - (a) rendered reasonable assistance to any person injured in the accident;
 - (b) given to the person struck, or to the driver or occupant of or person attending any vehicle collided with, the defendant's name and address, the name of the defendant's insurance agent or company if the defendant had automobile liability insurance, and the motor vehicle registration number of the vehicle the defendant was driving.
 - (c) exhibited the defendant's driver's license, if it was available, to the person struck or to the driver or occupant of or person attending any vehicle collided with.

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.

As used herein, rendering reasonable assistance to a person injured includes conveying, or making arrangements for conveying, that person to a physician, surgeon, hospital, or other medical facility for medical or surgical

treatment if it is apparent that such treatment is necessary or if such conveying is requested by the injured person.

Comment

I.C. § 18-8007.

ICJI 1036 LEAVING SCENE OF ACCIDENT - ATTENDED VEHICLE

INSTRUCTION NO.

In order for the defendant to be guilty of Leaving the Scene of an Accident [Involving an Attended Vehicle], the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] was driving a motor vehicle
4. on public or private property open to the public,
5. the defendant's vehicle was involved in an accident
6. which resulted in damage to another vehicle which was driven or attended by a person,
7. the defendant had knowledge of the accident, and
8. either the defendant failed to immediately stop [his] [her] vehicle at the scene of the accident, or to stop as close as possible and then immediately return to the scene of the accident, or after stopping at or returning to the scene of the accident, the defendant failed to remain at the scene until [he] [she] had done the following:

- (a) given his or her name and address;
- (b) given the name of his or her insurance agent or company, if the defendant had automobile liability insurance;
- (c) given the vehicle registration number of the vehicle the defendant was driving; and
- (d) if available, exhibited [his] [her] driver's license to the driver of or person attending the other vehicle involved in the collision.

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. §§ 49-1301 & 49-1302. Although the statute does not expressly require that the defendant have knowledge of the accident, it is an essential element of the offense. *State v. Parish*, 79 Idaho 75, 310 P.2d 1082 (1957).

ICJI 1037 LEAVING SCENE OF ACCIDENT - UNATTENDED VEHICLE

INSTRUCTION NO.

In order for the defendant to be guilty of Leaving the Scene of an Accident [Involving an Unattended Vehicle], the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] was driving a motor vehicle
4. which collided with an unattended vehicle,
5. the defendant had knowledge of the collision, and
6. the defendant failed to stop and do either of the following:

(a) locate the operator or owner of the unattended vehicle and notify him or her of the defendant's name and address and of the name and address of the owner of the vehicle the defendant was driving, or

(b) leave in a conspicuous place in the unattended vehicle a written notice giving the defendant's name and address, the name and address of the owner of the vehicle the defendant was driving, and a statement of the circumstances.

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. § 49-1303. Although the statute does not expressly require that the defendant have knowledge of the accident, it is an essential element of the offense. *State v. Parish*, 79 Idaho 75, 310 P.2d 1082 (1957).

ICJI 1038 LEAVING SCENE OF ACCIDENT - FIXTURES

INSTRUCTION NO.

In order for the defendant to be guilty of Leaving the Scene of an Accident [Involving Fixtures], the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] was driving a motor vehicle
4. which was involved in an accident resulting in damage to fixtures or other property legally upon or adjacent to a highway,
5. the defendant had knowledge of the accident, and
6. the defendant failed to do all of the following:
 - (a) take reasonable steps to locate the owner or person in charge of the property;
 - (b) notify such person of the accident, the defendant's name and address, the name of the defendant's insurance agent or company if the defendant had automobile liability insurance, and the motor vehicle registration number of the vehicle the defendant was driving; and
 - (c) exhibit [his] [her] driver's license, if it was available and the defendant was requested to exhibit it.

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. § 49-1304. Although the statute does not expressly require that the defendant have knowledge of the accident, it is an essential element of the offense. *State v. Parish*, 79 Idaho 75, 310 P.2d 1082 (1957).

ICJI 1040 PASSING SCHOOL BUS

INSTRUCTION NO.

In order for the defendant to be guilty of Overtaking and Passing a School Bus, the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name], while driving a vehicle [on a highway of three (3) lanes or less],
4. [met] [overtook] a school bus
5. which was stopped on the highway,
6. the school bus had visual signals in operation, and
7. [the defendant failed to stop before reaching the school bus] [or] [the defendant stopped and then proceeded on before the school bus either resumed motion or turned off the visual signals].

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 "visual signals" on the school bus must be as follows:

(a) signal lamps mounted as high and as widely spaced laterally as practicable which display to the front and to the rear two (2) alternately flashing red lights located at the same level which are visible at five hundred (500) feet in normal light;

(b) yellow signal lamps mounted near and at the same level as each of the four, above-described red lamps, but closer to the vertical centerline of the bus, which display to the front and to the rear two (2) alternately flashing yellow lights which are visible at five hundred (500) feet in normal light; and

(c) a semaphore stop arm, with a driver-controlled mechanism, mounted on the left side of the bus opposite the driver's seat, which stop arm is a flat eighteen-inch octagon, exclusive of brackets for mounting, with reflectorized material on both sides, and is red in color with a silver white border and with six-inch high, three-quarter inch wide, silver white letters reading "stop."

The above-described yellow signal lamps shall be displayed at least two hundred (200) feet before every stop, and the above-described red signal lamps shall be displayed while the school bus is stopped.

Comment

I.C. §§ 49-1422 & 49-915. The bracketed wording "on a highway of three (3) lanes or less" applies only when the defendant met the school bus.

ICJI 1045 FICTITIOUS DISPLAY

INSTRUCTION NO.

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

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] [displayed] [caused to be displayed] [permitted to be displayed] [had in possession] a [registration card] [license plate]
4. knowing that it [was fictitious] [or] [had been cancelled, revoked, suspended, or altered].

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. § 49-456(2).

ICJI 1050 DUTY TO NOTIFY OF ADDRESS CHANGE

INSTRUCTION NO.

It is the responsibility of every licensed driver to keep a current address on file with the Idaho Transportation Department. If, after applying for or receiving a driver's license, a person moves from the address shown in the application or driver's license issued, Idaho law requires the person to notify the Idaho Transportation Department in writing of the old and new addresses within thirty (30) days.

Comment

I.C. § 49-320(1).