ICJI 1501 LIMITATION OF ACTION DEFENSE

INSTRUCTION NO. _____

This action was commenced on the _____ day of _____ , 200 ___ .

The defendant may not be found guilty unless the state proves beyond a reasonable doubt that the defendant committed the offense charged within _____ years before the action was commenced.

*Comment*

I.C. ss 19-401 to 19-405

This instruction should be used only when the statute of limitation has been raised as a defense. The committee recommends that the jury not be required by special verdict form to find whether the statute of limitation defense was established. Because of the state's general burden of proof, a simple finding of guilty or not guilty of the offense charged should suffice.

ICJI 1502 ALIBI DEFENSE

INSTRUCTION NO.

The defendant in this case has introduced evidence tending to show that the defendant was not present at the time and place of the commission of the alleged offense for which the defendant is here on trial. This is what is known as an alibi. If, after a consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the crime was committed, the defendant is entitled to an acquittal.

Comment

The committee recommends that no alibi instruction be given. The purpose of alibi evidence is to create a reasonable doubt as to whether it was the defendant who committed the crime charged. *State v. Sheehan*, 33 Idaho 553, 196 P. 532 (1921). The jury instructions typically given inform the jury that their verdict must be not guilty unless the state proves every material allegation of the offense beyond a reasonable doubt, including the allegation that the defendant committed the offense charged. These instructions adequately cover the same issue that is addressed by an alibi instruction. *State v. Ward*, 31 Idaho 419, 173 P. 497 (1918); *State v. Webb*, 6 Idaho 428, 55 P. 892 (1899); *State v. Nelson*, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1987); *State v. Kay*, 108 Idaho 661, 710 P.2d 281 (Ct. App. 1985); and *State v. Elisondo*, 103 Idaho 69, 644 P.2d 992 (Ct. App. 1982). The jury does not need an alibi instruction in order to understand the significance of evidence showing that the defendant was not at the scene of the crime when it was committed. If the trial court decides to give an alibi instruction, however, the committee recommends that this instruction, based on *State v. Holm*, 93 Idaho 904, 478 P.2d 284 (1970), be given.

ICJI 1503 INTOXICATION DEFENSE

INSTRUCTION NO. _____

Our law provides that "no act committed by a person while in a state of voluntary intoxication is less criminal by reason of [the person] having been in such condition."

This means that voluntary intoxication, if the evidence shows that the defendant was in such a condition when the defendant allegedly committed the crime charged, is not a defense in this case.

Comment

I.C. s 18-116. *See Montana v. Egelhoff*, 518 U.S. 37, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996); *State v. Ransom*, 137 Idaho 560, 50 P.3d 1055 (Ct. App. 2002).

Involuntary intoxication is a defense. I.C. s 18-116.

[Revised July 2005]

ICJI 1504 INTOXICATION A RELEVANT ISSUE -- DEFENSE

INSTRUCTION NO. _____

For the defendant to be guilty of [name of offense], the state must prove the defendant had a particular [state of mind] [purpose] [motive] [intent]. Evidence was offered that the defendant was intoxicated at the time of the alleged offense. If the state has failed to prove such intoxication was voluntary, you may consider the defendant's state of intoxication in determining whether the defendant had that required [state of mind] [purpose] [motive] [intent].

If from all the evidence you have a reasonable doubt whether the defendant was capable of forming such [state of mind] [purpose] [motive] [intent], you must find the defendant not guilty.

Comment

I.C. s 18-116.

If specific intent, state of mind, purpose or motive *is* an issue and the issue of voluntary intoxication is raised, give this instruction *and* ICJI 1503.

This instruction should be given only if there is evidence that the defendant was involuntarily intoxicated when committing the offense. *See Montana v. Egelhoff*, 518 U.S. 37, 116 S.Ct. 2013, 135 L.Ed.2d 361 (1996); *State v. Ransom*, 137 Idaho 560, 50 P.3d 1055 (Ct. App. 2002).

[Revised July 2005]

ICJI 1505 MENTAL ILLNESS DEFENSE

INSTRUCTION NO. _____

Our law provides that mental illness is not a defense to any charge of criminal conduct.

This means that mental illness, if the evidence shows such a condition to exist at the time the defendant allegedly committed the crime charged, is not of itself a defense in this case.

Comment

I.C. s 18-207.

If specific intent, state of mind, purpose or motive is *not* an issue, give this instruction only. If specific intent, state of mind, purpose or motive *is* an issue, give this instruction *and* ICJI 1506.

ICJI 1506 MENTAL ILLNESS A RELEVANT ISSUE -- DEFENSE

INSTRUCTION NO. _____

For the defendant to be guilty of [name of offense], the state must prove the defendant had a particular [state of mind] [purpose] [motive] [intent]. Evidence was offered that the defendant was suffering from a mental illness at the time of the alleged offense. You should consider the defendant's mental condition in determining whether the defendant had that required [state of mind] [purpose] [motive] [intent].

If from all the evidence you have a reasonable doubt whether the defendant was capable of forming such [state of mind] [purpose] [motive] [intent], you must find the defendant not guilty.

Comment

If specific intent, state of mind, purpose or motive *is* an issue, give this instruction *and* ICJI 1505.

ICJI 1507 UNCONSCIOUS ACT DEFENSE

INSTRUCTION NO. _____

A person who commits what would otherwise be a criminal act without being conscious of committing the act is not guilty of a crime.

Evidence has been received which may tend to show that the defendant was not conscious of committing the act for which the defendant is here on trial. If after a consideration of all the evidence you have a reasonable doubt that the defendant was conscious of committing the act at the time the alleged crime was committed, the defendant must be found not guilty.

Comment

I.C. s 18-201.

ICJI 1508 MISFORTUNE OR ACCIDENT DEFENSE

INSTRUCTION NO. _____

All persons are capable of committing crimes, except those who committed the act or made the omission charged through misfortune or by accident when it appears that there was not evil design, intention or culpable negligence.

Comment

I.C. s 18-201(3).

The committee recommends that rather than instruct in the specific language of I.C. s 18-201(3), the court should instruct the jury in language tailored to the facts of the case, assuming a defense under I.C. s 18-201(3) applies to the case.

The reference to "culpable negligence" in I.C. s 18-201(3) is simply a reiteration of the excusable homicide standard under I.C. s 18-4012. Negligence in committing an unlawful act, resulting in death, is "culpable negligence." *Haxforth v. State*, 117 Idaho 189, 786 P.2d 580 (Ct. App. 1990).

ICJI 1509 THREATS & MENACES DEFENSE

INSTRUCTION NO. _____

The defendant contends that at the time the crime was committed, the defendant was acting under duress or coercion because the defendant was [description of duress or coercion; e.g., ordered by a person with a gun to rob the bank].

Under the law, a defendant is not guilty of a crime if the defendant committed the act or made the omission charged under threats or menaces sufficient to show that the defendant had reasonable cause to and did believe the defendant's life would be endangered if the defendant refused. On this issue, just as on all others, the burden is on the state to prove the defendant's guilt beyond a reasonable doubt. To find the defendant guilty, therefore, you must conclude beyond a reasonable doubt that when the defendant participated in the [describe offense], the defendant did not have reasonable cause to believe or did not in fact believe that the defendant's life would be endangered if the defendant refused to participate.

Comment

I.C. s 18-201(4).

This instruction cannot be used if the crime is punishable with death.

A "threat" is a declaration of an intention to injure another by the commission of an unlawful act; a "menace" is synonymous with "threat". *State v. Eastman*, 122 Idaho 87, 831 P.2d 555 (1992).

ICJI 1510 IGNORANCE OR MISTAKE OF FACT DEFENSE

INSTRUCTION NO. _____

For the defendant to be guilty of [name of offense], the state must prove the defendant had a particular intent. Evidence was offered that at the time of the alleged offense the defendant [was ignorant of] [or] [mistakenly believed] certain facts. You should consider such evidence in determining whether the defendant had the required intent.

If from all the evidence you have a reasonable doubt whether the defendant had such intent, you must find the defendant not guilty.

Comment

I.C. s 18-201(1). Ignorance or mistake of fact is only a defense to a crime having a specific intent as an element. *State v. Stiffler*, 117 Idaho 405, 788 P.2d 220 (1990). Its purpose is to show that the defendant lacked such specific intent because the defendant was ignorant or mistaken as to the facts (e.g., he mistakenly believed the object he took was his own and therefore did not intend to deprive the owner of the object). Since such evidence is offered to show the defendant did not have a specific intent that is an element of the crime, the defendant cannot be required to prove that the defendant was ignorant or mistaken as to the facts. *Patterson v. New York*, 432 U.S. 197 (1977); *Mullaney v. Wilbur*, 421 U.S. 684 (1975); *In re Winship*, 397 U.S. 358 (1970). For such defense to prevail, the defendant need only create a reasonable doubt as to whether the defendant had the required specific intent.

The legislature, in codifying the crime of sexual battery of a minor child 16 or 17 years of age, I.C. s 18-1508A, intended to incorporate the immemorial tradition of the common law that a mistake of fact as to the complainant's age is no defense. *State v. Oar*, 129 Idaho 337, 924 P.2d 599 (1996).

ICJI 1511 IGNORANCE OR MISTAKE OF LAW DEFENSE

INSTRUCTION NO. _____

When the evidence shows that a person voluntarily did that which the law declares to be a crime, it is no defense that the person did not know that the act was unlawful or that the person believed it to be lawful.

Comment

*State v. Fox*, 124 Idaho 924, 866 P.2d 181 (1993).

ICJI 1512 NECESSITY DEFENSE

INSTRUCTION NO. _____

The defendant cannot be guilty [of (name of crime)] if the defendant acted because of necessity. Conduct which violates the law is justified by necessity if:

1. there is a specific threat of immediate harm to [the defendant] [name of person],

2. the defendant did not bring about the circumstances which created the threat of immediate harm,

3. the defendant could not have prevented the threatened harm by any less offensive alternative, and

4. the harm caused by violating the law was less than the threatened harm.

The state must prove beyond a reasonable doubt that the defendant did not act because of necessity. If you have a reasonable doubt on that issue, you must find the defendant not guilty.

Comment

*State v. Hastings*, 118 Idaho 854, 801 P.2d 563 (1990).

ICJI 1513 ENTRAPMENT DEFENSE

INSTRUCTION NO. _____

You have heard evidence [e.g., that a state agent persuaded the defendant to sell the drugs and he had never previously sold drugs]. To consider this evidence, you need to understand a legal term that we call "entrapment." Even though the defendant may have [e.g. sold the drugs] as charged by the state, if it was the result of entrapment then you must find the defendant not guilty. Law enforcement officials entrapped the defendant if three things occurred:

1. The idea for committing the crime came from an agent of the state and not from the defendant.

2. The state agent(s) then persuaded or talked the defendant into committing the crime. Merely giving the defendant an opportunity to commit the crime is not the same as persuading the defendant to commit the crime.

3. The defendant was not ready and willing to commit the crime before the law enforcement officials spoke with the defendant. Consider all of the facts when you decide whether the defendant would have been ready and willing to commit the crime without the actions of the state agent(s).

If, from all of the evidence, you have a reasonable doubt whether the defendant was entrapped into committing the offense, you must find the defendant not guilty.

Comment

This instruction is a summary of the three instructions on entrapment upheld in *State v. Hansen*, 105 Idaho 816, 673 P.2d 416 (1983). It should be given only if the defendant has produced "some substantial evidence" supporting the defense of entrapment.

ICJI 1514 JUSTIFIABLE HOMICIDE DEFENSE

INSTRUCTION NO. _____

The defendant contends as a defense in this case that the killing was justifiable because the defendant was [description of justification; *e.g.* an excusable homicide such as attempting to stop the commission of a robbery].

Under the law, homicide is justifiable if

[committed while resisting an attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.]

[committed in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein. However, the bare fear of such acts is not sufficient unless the circumstances are sufficient to create such a fear in a reasonable person and the defendant acted under the influence of such fears alone.]

[committed in the lawful defense of the defendant, or of a wife or husband, parent, child, master, mistress or servant of the defendant, when there is reasonable grounds to apprehend a design to commit a felony or to do some great bodily injury and imminent danger of such design being accomplished; but such person, or the person on whose behalf the defense was made, if that person was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed. However, the bare fear of such acts is not sufficient unless the circumstances are sufficient to create such a fear in a reasonable person and the defendant acted under the influence of such fears alone.]

[when necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.]

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must find the defendant not guilty.

Comment

I.C. ss 18-4009, 18-4013, & 18-4010.

The committee recommends that rather than instruct in the specific language of IC s 18-4009, the

court should instruct the jury in language tailored to the facts of the case, assuming a defense under IC s 18-4009 applies.

Idaho statutory and case law previously cast the burden upon a homicide defendant to prove the defendant acted justifiably, as in self-defense. However, in that particular circumstance, the underlying statute, I.C. s 19-2112, was repealed in 1977 (1977 Session Law Chapter 154 Section 6). *Martin v. Ohio*, 480 U.S. 228, 94 L.Ed. 2d 267, 108 S.Ct. 1098 (1987), suggests that Idaho is among 48 states which no longer place such a burden on the defendant, although they would be constitutionally permitted to do so.

The law of self-defense does not require a defendant to wait until he or she ascertains whether the danger is apparent or real. A person confronted with great danger, or what would appear to a reasonable person as great danger, has a clear right to act upon appearances such as would influence the action of a reasonable person. Also, the defendant is not required to retreat or to do everything in his or her power to avoid the necessity of acting in self-defense. The defendant is only expected to act as a reasonably prudent person would act under similar circumstances and surroundings. *State v. McGreevey*, 17 Idaho 453, 105 P. 1047 (1909).

ICJI 1515 JUSTIFIABLE HOMICIDE BY OFFICER DEFENSE

INSTRUCTION NO. _____

The defendant contends as a defense in this case that the killing of the decedent was a justifiable homicide.

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

[In obedience to any judgment of a competent court; or]

[When reasonably necessary in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty including suppression of riot or keeping and preserving the peace. Use of deadly force shall not be justified in overcoming actual resistance unless the officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or to other persons;]

[When reasonably necessary in preventing rescue or escape or in retaking inmates who have been rescued or have escaped from any jail, or when reasonably necessary in order to prevent the escape of any person charged with or suspected of having committed a felony, provided the officer has probable cause to believe that the inmate, or persons assisting his escape, or the person suspected of or charged with commission of a felony poses a threat of death or serious physical injury to the officer or other persons.]

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must find the defendant not guilty.

Comment

I.C. ss 18-4011 & 18-4013.

The committee recommends that rather than instruct in the specific language of I.C. s 18-4011, the court should instruct the jury in language tailored to the facts of the case, assuming this defense applies to the case.

Idaho statutory and case law previously cast the burden upon a homicide defendant to prove that the defendant's actions were excusable, as in self-defense. However, in that particular circumstance, the underlying statute, I.C. s 19-2112, was repealed in 1977 (1977 Session Law Chapter 154 Section 6). *Martin v. Ohio*, 480 U.S. 228, 94 L.Ed. 2d 267, 108 S.Ct. 1098 (1987), suggests that Idaho is among 48 states which no longer place such a burden on the defendant,

although they would be constitutionally permitted to do so.

ICJI 1516 EXCUSABLE HOMICIDE DEFENSE

INSTRUCTION NO. _____

The defendant contends as a defense in this case that the killing of the decedent was an excusable homicide.

Homicide is excusable when

[insert description of conduct and/or event, appropriately worded consistent with the applicable provisions of I.C. s 18-4012, based upon the facts in evidence].

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not excusable. If there is a reasonable doubt whether the homicide was excusable, you must find the defendant not guilty.

Comment

I.C. ss 18-4012 & 18-4013.

The committee recommends that rather than instruct in the specific language of I.C. s 18-4012, the court should instruct the jury in language tailored to the facts of the case, assuming this defense applies to the case.

Idaho statutory and case law previously cast the burden upon a homicide defendant to prove that the defendant's actions were excusable, as in self-defense. However, in that particular circumstance, the underlying statute, I.C. s 19-2112, was repealed in 1977 (1977 Session Law Chapter 154 Section 6). *Martin v. Ohio*, 480 U.S. 228, 94 L.Ed.2d 267, 108 S.Ct. 1098 (1987), suggests that Idaho is among 48 states which no longer place such a burden on the defendant, although they would be constitutionally permitted to do so.

ICJI 1517 SELF-DEFENSE

INSTRUCTION NO. _____

A [homicide] [battery] is justifiable if the defendant was acting in [self-defense] [defense of another].

In order to find that the defendant acted in [self-defense] [defense of another], all of the following conditions must be found to have been in existence at the time of the [killing] [striking]:

1. The defendant must have believed that [the defendant] [another person] was in imminent danger of [death or great bodily harm] [bodily harm].

2. In addition to that belief, the defendant must have believed that the action the defendant took was necessary to save [the defendant] [another person] from the danger presented.

3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that [the defendant] [another person] was in imminent danger of [death or great bodily injury] [bodily injury] and believed that the action taken was necessary.

4. The defendant must have acted only in response to that danger and not for some other motivation.

[5. When there is no longer any reasonable appearance of danger, the right of (self-defense) (defense of another) ends.]

In deciding upon the reasonableness of the defendant's beliefs, you should determine what an ordinary and reasonable person might have concluded from all the facts and circumstances which the evidence shows existed at that time, and not with the benefit of hindsight.

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of [death or great bodily injury] [bodily injury] is not sufficient to justify a [homicide] [battery]. The defendant must have acted under the influence of fears that only a reasonable person would have had in a similar position.

The burden is on the prosecution to prove beyond a reasonable doubt that the [homicide] [battery] was not justifiable. If there is a reasonable doubt whether the [homicide] [battery] was justifiable, you must find the defendant not guilty.

Comment

I.C. ss 18-4009, 18-4010 & 18-4013. *State v. Baker*, 103 Idaho 43, 644 P.2d 365(Ct. App. 1982); *State v. Wilson*, 41 Idaho 616, 243 P.2d 359 (1925).

This instruction may be modified by the appropriate selection of bracketed language for use in cases involving defense of others as well as for use in either homicide or battery cases.

Use number 5 only where "abatement" appears from the evidence.

Idaho statutory and case law previously cast the burden upon a homicide defendant to prove that the defendant's actions were excusable, as in self-defense. However, in that particular circumstance, the underlying statute, I.C. s 19-2112, was repealed in 1977 (1977 Session Law Chapter 154 Section 6). *Martin v. Ohio*, 480 U.S. 228, 94 L.Ed. 2d 267, 108 S.Ct. 1098 (1987), suggests that Idaho is among 48 states which no longer place such a burden on the defendant, although they would be constitutionally permitted to do so.

ICJI 1518 SELF-DEFENSE -- REASONABLE FORCE

INSTRUCTION NO. _____

The kind and degree of force which a person may lawfully use in [self-defense][defense of another] are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. Although a person may believe that the person is acting, and may act, in [self-defense] [defense of another], the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

*Comment*

*State v. Scroggins*, 91 Idaho 847, 433 P.2d 117 (1967).

ICJI 1519 SELF-DEFENSE -- DUTY TO RETREAT

INSTRUCTION NO. _____

In the exercise of the right of [self-defense] [defense of another], one need not retreat. One may stand one's ground and defend [oneself] [the other person] by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge[; and a person may pursue the attacker until [the person] [the other person] has been secured from danger if that course likewise appears reasonably necessary]. This law applies even though the person being [attacked] [defended] might more easily have gained safety by flight or by withdrawing from the scene.

Comment

*State v. McGreevey*, 17 Idaho 453, 466, 105 Pac. 1047 (1909); *State v. Dunlap*, 40 Idaho 630, 637, 235 Pac. 432 (1925).

This instruction may be used with homicide or with battery. The committee suggests that the bracketed language at the end of the second sentence only be used where the facts indicate that the defendant pursued his attacker.

ICJI 1520 SELF-DEFENSE -- VICTIM'S REPUTATION

INSTRUCTION NO. _____

Evidence has been admitted concerning the reputation of the victim for being quarrelsome, violent and dangerous. You may consider this evidence only for the limited purpose of making your determination as to [the reasonableness of the defendant's beliefs under the circumstances then apparent to the defendant, but only if the defendant was aware of such reputation] [whether the victim was the aggressor].

Comment

Use either bracketed portion, or both, as may be appropriate under the facts presented.

ICJI 1521 SELF-DEFENSE -- PARTICIPANTS IN MUTUAL COMBAT

INSTRUCTION NO. _____

The right of self-defense is not available to a person who, by pre-arrangement or agreement, engages in mutual combat, unless and until the person has really and in good faith endeavored to decline further combat, and has fairly and clearly informed the adversary of a desire for peace and that the person has abandoned the contest. If, after the adversary has been so informed and given an opportunity to quit the fight, such adversary continues the combat, such continuance of the fight is a new assault by the adversary, and the person seeking to withdraw from the fight may exercise the right of self-defense.

Comment

I.C. s 18-4009(3).

ICJI 1522 DEFENSE OF PROPERTY -- REASONABLE FORCE

INSTRUCTION NO. _____

When conditions are present which under the law justify a person in using force in defense of [another] [the person] [the person's family] [property in the person's lawful possession], that person may use such degree and extent of force as would appear to be reasonably necessary to prevent the threatened injury. Reasonableness is to be judged from the viewpoint of a reasonable person placed in the same position and seeing and knowing what the defendant then saw and knew. Any use of force beyond that limit is unjustified.

Comment

I.C. ss 18-4009(2), 19-202, 19-202A, & 19-203; *State v. Mathewson*, 93 Idaho 769, 772, 472 P.2d 638 (1970).

Idaho case law does not seem to address the requirement of reasonableness in defense of property, but that is certainly consistent with what is required in self-defense and defense of others.