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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

V.

BRYAN C. KOHBERGER,

Defendant.

CASE NUMBER CR01-24-31665

**NOTICE OF FILING DEFENDANT'S
PROPOSED JURY INSTRUCTIONS
UNDER SEAL**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby submits to the Court the Defendant's proposed jury instructions.

DATED this 14 day of April, 2025.



ANNE C. TAYLOR
ANNE TAYLOR LAW, PLLC

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 14 day of April, 2025 addressed to:

Latah County Prosecuting Attorney –via Email: paservice@latahcountyid.gov

Elisa Massoth – via Email: legalassistant@kmrs.net

Jay Logsdon – via Email: Jay.Logsdon@spd.idaho.gov

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Jeffery Nye, Deputy Attorney General – via Email: Jeff.nye@ag.idaho.gov



ICJI 103 REASONABLE DOUBT

PRESUMPTION OF INNOCENCE-REASONABLE DOUBT

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

Under our law and system of justice, Mr. Kohberger is presumed to be innocent. The presumption of innocence means two things.

First, the State has the burden of proving Mr. Kohberger guilty. The State has that burden throughout the trial. Mr. Kohberger is never required to prove his innocence, nor does he ever have to produce any evidence at all.

Second, the State must prove the alleged crime beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that an accused is guilty. It is not required that the State prove a defendant's guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that Mr. Kohberger is guilty, it is your duty to find him not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that he is guilty, it is your duty to find him guilty.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 318 IMPEACHMENT-PRIOR INCONSISTENT STATEMENT WITHOUT OATH

DEFENDANT'S REQUESTED INSTRUCTION NO. _____

You have heard the testimony of _____ concerning a statement made by _____ before this trial. The believability of a witness may be challenged by evidence that on some former occasion the witness made a statement that was not consistent with the witness' testimony in this case. Evidence of this kind may be considered by you only for the purpose of deciding [whether you believe _____'s testimony.] [the weight to be given the testimony that you heard from the witness in this courtroom.] This evidence of an earlier statement has been admitted to help you decide if you believe _____'s testimony. You cannot use these earlier statements as evidence in this case.

Comment

The committee recommends that this instruction be given immediately following the witness' testimony upon request made by the party opposing the impeachment. If this instruction is not requested prior to or immediately after the testimony, the trial court does not err in failing to give it. *State v. Vaughn*, 124 Idaho 576, 861 P.2d 1241 (Ct. App. 1993).

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 319 IMPEACHMENT -- PRIOR INCONSISTENT STATEMENTS UNDER OATH

DEFENDANT'S REQUESTED INSTRUCTION NO. _____

You have heard the testimony of _____. You will recall it was brought out that before this trial that this witness made statements concerning the subject matter of this trial. Even though these statements were not made in this courtroom they were made under oath at [e.g.: another trial.]. Because of this, you may consider these statements as if they were made at this trial and rely on them as much, or as little, as you think proper.

Comment

The committee recommends that this instruction be given immediately following the witness' testimony upon request made by the party opposing the impeachment. Without such a request, it may be given at the close of the evidence.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 345 EXPERT WITNESS TESTIMONY

DEFENDANT'S REQUESTED INSTRUCTION NO. _____

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

Comment

This is the last paragraph of ICJI 104.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 700B Punishment a Concern, Capital Case

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

The State is seeking the death penalty in this case. If Mr. Kohberger is convicted of murder in the first degree, there will then be a separate sentencing phase of the trial. At that sentencing phase, additional evidence may be presented and the jury will be given additional instructions. If the jury finds one statutory aggravating circumstance, but finds that death would be unjust, the judge will sentence Mr. Kohberger to a term of fixed life imprisonment. If the jury does not find a statutory aggravating circumstance, the judge must then sentence him to life in prison, and the judge must set a fixed period of imprisonment of anywhere from ten years up to life, during which the he will not be eligible for parole.

Comment

I.C. § 19-2515(7).

This instruction should only be given if the defendant is charged with murder in the first degree and a valid death notice has been filed. This instruction should be given in the guilt phase of a Capital case.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 700C Jury Must Not Consider Penalty in Guilt Phase of Capital Case

DEFENDANT'S REQUESTED INSTRUCTION NO. _____

At the conclusion of the trial, you will decide whether the State has proved Mr. Kohberger guilty beyond a reasonable doubt. Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict.

Comment

In the guilt phase of a Capital case, use this instruction. Do not use ICJI 1701 or ICJI 106.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1701 Nature of Hearing

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

Mr. Kohberger has been convicted of the crime of First-Degree Murder. We will now have a sentencing phase of the trial regarding that offense.

Additional evidence may be presented during the sentencing phase. You may also consider the evidence presented during the trial.

Before the death penalty can be considered, the State must prove at least one statutory aggravating circumstance beyond a reasonable doubt. If you unanimously decide that the State has so proven one or more statutory aggravating circumstances, then you must decide whether the imposition of the death penalty would be unjust by weighing all mitigating circumstances against each statutory aggravating circumstance that has been proven.

At a separate proceeding, the court will sentence Mr. Kohberger for the other offense of which you found him guilty.

Comment

I.C. § 19-2515. This instruction should be given at the beginning of the sentencing phase before the presentation of evidence. Use the applicable bracketed material.

The “beyond a reasonable doubt” standard applies to the existence of aggravating circumstances, not to the process of weighing them against the mitigating circumstances, which must occur before sentence is imposed. *State v. Sivak*, 105 Idaho 900, 674 P.2d 396 (1983). All relevant mitigating factors may be considered. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), *overruled on other grounds by State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991).

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1703 Burden of Proof

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

It is presumed that no statutory aggravating circumstance exists in this case. This presumption remains throughout the sentencing phase and during your deliberations.

The State has the burden of proving the existence of a statutory aggravating circumstance, and that burden remains on the State throughout the sentencing phase. Mr. Kohberger is not required to prove the absence of any aggravating circumstance, nor is he required to produce any evidence at all.

The State must prove the existence of a statutory aggravating circumstance beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced the State has established a statutory aggravating circumstance. It is not required that the State prove a statutory aggravating circumstance beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt about a statutory aggravating circumstance, it is your duty to find that a statutory aggravating circumstance has not been proven. On the other hand, if after careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt about a statutory aggravating circumstance, it is your duty to find that a statutory aggravating circumstance has been proven.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

INSTRUCTION BEFORE ANY VICTIM STATEMENT

ICJI 1704 Victim Impact Statement

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

Victims have the right to personally address you by making a victim impact statement, which is a statement concerning the victim’s personal characteristics and the emotional impact of the murder. A victim impact statement is not made under oath and is not subject to cross-examination. A victim may not make any statements that are characterizations or opinions about the crime, Mr. Kohberger, or the appropriate sentence, and you should disregard any such comments. You may otherwise consider victim impact statements in your deliberations.

Comment

State v. Lovelace, 140 Idaho 53, 90 P.3d 278 (2003), IDAHO CONST. art. I, § 22(6); I.C. § 19-2515(5)(a); *State v. Hall*, 163 Idaho 744, 829, 419 P.3d 1042, 1127 (2018).

This instruction should be given only if victim impact statements are made, and it should be given immediately before those statements.

The court may modify this instruction by substituting for the word “victims” the names of those who will be making victim impact statements.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1706 Defendant's Constitutional Right Not to Be Compelled to Testify

DEFENDANT'S REQUESTED INSTRUCTION NO. _____

Mr. Kohberger has a constitutional right not to be compelled to testify. The decision whether to testify is left to him, acting with the advice and assistance of his lawyers. You must not draw any inference of guilt from the fact that Mr. Kohberger did not testify during the guilt phase of the trial or during the sentencing phase, nor should this fact be discussed by you or enter into your deliberations in any way.

Comment

This instruction should only be given **if the defendant elects not to testify** during either the guilt phase of the trial or the sentencing phase, or both. Use the applicable bracketed language.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1707 Defendant's Right to Allocution

DEFENDANT'S REQUESTED INSTRUCTION NO. _____

Mr. Kohberger has the right to personally address you. This is called the "right of allocution." Allocution is not made under oath and is not subject to cross-examination. The law provides that these statements are something that he is allowed to present to you as mitigation. You may consider these statements in your deliberations.

Comment

This instruction should be given only if the defendant exercises the right of allocution, and it should be given immediately before the defendant does so.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1708 Aggravating Circumstances

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

The statutory aggravating circumstances are simply allegations; they are not evidence. You should not be influenced or prejudiced for or against Mr. Kohberger because the State is seeking the death penalty.

The State has alleged the following statutory aggravating circumstance[s]:

[a] At the time the murder was committed, the defendant also committed another murder.

[b] The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity.

[c] By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

[d] 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.

If, after considering all the evidence, you unanimously find that one or more of the aggravating circumstances exist beyond a reasonable doubt, you must indicate on the special verdict form by specifically stating what aggravating circumstance or circumstances exist.

If, after considering all the evidence, you unanimously find that there is a reasonable doubt about the existence of a statutory aggravating circumstance, or you cannot unanimously agree on the existence of a statutory aggravating circumstance, you must indicate on the special verdict form that the State has not proven the aggravating circumstance. You must indicate this finding by checking the appropriate line next to each aggravating circumstance on the verdict form.

Your presiding juror must sign the verdict form.

Comment

I.C. § 19-2515(7)–(9).

The trial judge should list only the aggravating circumstance or circumstances that the defendant was notified of prior to trial. Use the applicable bracketed language.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1721 Mitigation

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

A mitigating factor is any fact or circumstance, relating to the crime or to Mr. Kohberger’s state of mind or condition at the time of the crime, or to his character, background, or record, that tends to suggest that a sentence other than death should be imposed.

A mitigating factor does not have to constitute a defense, excuse, or justification for the crime, nor does it even have to reduce the degree of the Mr. Kohberger’s blame for the crime.

My instructions given at the end of the trial phase that you were not to allow sympathy for Mr. Kohberger to enter your deliberations do not apply at this sentencing phase. Mitigating factors may include any fact or circumstance that inspires sympathy, compassion, or mercy for the him.

Evidence supporting the existence of a mitigating factor may come from the trial phase or this sentencing phase, whether produced by the Mr. Kohberger or the State.

Comment

Skipper v. South Carolina, 476 U.S. 1 (1986). Use the applicable bracketed language.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1722 Jury Deliberations

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

In reaching your verdict, you must first decide whether the State has proven beyond a reasonable doubt any of the statutory aggravating circumstances exist. You must consider each of the alleged statutory aggravating circumstances. Your decision that any of the statutory aggravating circumstances exist must be unanimous. If you find that the State has failed to prove the existence of any statutory aggravating circumstance, or if you are unable to unanimously agree on that issue, then you must so indicate on the verdict form.

If the State has failed to prove the existence of a statutory aggravating circumstance, you need not deliberate further. Merely notify the bailiff that you are done. The judge must then sentence the defendant to life in prison, and the judge must set a fixed period of imprisonment of at least ten years, during which the defendant will not be eligible for parole.

If you unanimously find that the State has proven the existence of a statutory aggravating circumstance, then you must so indicate on the verdict form. You must also then consider whether any mitigating circumstances exist that make the imposition of the death penalty unjust.

If you find that all mitigating circumstances are sufficiently compelling to make the imposition of the death penalty unjust, or you cannot unanimously agree on that issue, then you must notify the bailiff. The defendant will be sentenced to life in prison without the possibility of parole. A life sentence without possibility of parole under Idaho law means that a person must spend the rest of his or her natural life in prison.

If you find that all mitigating circumstances are not sufficiently compelling to make the imposition of the death penalty unjust, then the defendant will be sentenced to death.

You must each decide for yourself whether all mitigating factors presented, when weighed against each statutory aggravating circumstance proven by the State, are sufficiently compelling to make the imposition of the death penalty unjust. You do not have to unanimously agree upon what mitigating circumstances exist. The existence of mitigating factors need not be proven beyond a reasonable doubt. You must each decide for yourself whether mitigating circumstances exist and, if so, then consider them in your individual weighing process.

Once you have reached a unanimous decision on whether all mitigating circumstances, when weighed against each aggravating circumstance, make the imposition of the death penalty

unjust, or if you cannot unanimously agree on that issue, then you must indicate on the verdict form and notify the bailiff that you are done.

Comment

I.C. § 19-2515(7).

Use the applicable bracketed language.

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER

ICJI 1723 Multiple Aggravating Circumstances

DEFENDANT’S REQUESTED INSTRUCTION NO. _____

The State has alleged more than one statutory aggravating circumstance in this case. You must consider whether the State has proven the existence of more than one statutory aggravating circumstance beyond a reasonable doubt by relying on the same facts or independent facts. The same facts, without more, cannot be relied on to find more than one statutory aggravating circumstance beyond a reasonable doubt. Independent facts must exist for each statutory aggravating circumstance in order for you to find that the State has proven multiple statutory aggravating circumstances beyond a reasonable doubt.

Comment

State v. Dunlap, 155 Idaho 345, 365–66 (2013); *State v. Fain*, 116 Idaho 82, 99 (1989), overruled on other grounds by *State v. Card*, 121 Idaho 425 (1991); *State v. Osborn*, 102 Idaho 405, 418-19 (1981).

GIVEN _____

REFUSED _____

ACCEPTED _____

MODIFIED _____

COVERED _____

HONORABLE STEVEN J. HIPPLER