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SCMF-11-0000315

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the Publication and Distribution
of the
Hawai‘i Pattern Jury Instructions - Criminal

ORDER APPROVING PUBLICATION AND DISTRIBUTION
OF HAWAI‘I PATTERN JURY INSTRUCTIONS - CRIMINAL

(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

Upon consideration of the request of the Standing Committee on Pattern Criminal Jury Instructions to publish and distribute the (1) addition of Criminal Instructions 7.18A and 7.18B, and (2) revision of Criminal Instructions 3.01, 9.00, 10.00, 10.01, 10.02, 10.03, 10.04, and 10.04A, of the Hawai‘i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED, that the request is granted and the attached criminal jury instructions 3.01, 7.18A, 7.18B, 9.00, 10.00, 10.01, 10.02, 10.03, 10.04, and 10.04A are approved for publication and distribution.

IT IS FURTHER ORDERED that this approval for publication and distribution is not and shall not be considered by this court or any other court to be an approval or judgment as to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, October 8, 2012.

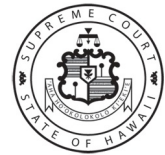
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack



3.01. Consider Instructions as a Whole

I will now instruct you on the law that you must follow in reaching your verdict.

You are the judges of the facts of this case. You will decide what facts were proved by the evidence. However, you must follow these instructions even if you disagree with them.

You must consider all the instructions as a whole and consider each instruction in the light of all the others. Do not single out any word, phrase, sentence or instruction and ignore the others. No word, phrase, sentence or instruction is more important just because it is repeated in these instructions.

In the event that a statement or argument made by a lawyer contradicts or misstates these instructions, you must disregard that statement or argument and follow these instructions.

Commentary

HRE 1102 provides, the “court shall instruct the jury regarding the law applicable to the facts of the case, but shall not comment on the evidence.”

Further, HRE 1102 provides the court shall also “inform the jury that they are the exclusive judges to all questions of fact and credibility of witnesses.”

Notes

See *State v. Espiritu*, 117 Hawai`i 127, 142-144, 176 P.3d 885, 900-902 (2008), regarding a misstatement of law made by counsel.

The court may also consider giving a curative instruction.

3.01. Consider Instructions as a Whole

I will now instruct you on the law that you must follow in reaching your verdict.

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Notes

See *State v. Espiritu*, 117 Hawai`i 127, 142-144, 176 P.3d 885, 900-902 (2008), regarding a misstatement of law made by counsel.

The court may also consider giving a curative instruction.

7.18A. Defense of Property When The Use Of “Deadly Force” Is At Issue

The use of force in the defense of property is a defense to the charge(s) of (specify charge and its included offenses). The use of force in defense of property involves consideration of two issues. First, you must determine whether the defendant did or did not use “deadly force.” Second, you must determine whether the force used was justified. The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justified. If the prosecution does not meet its burden, then you must find the defendant not guilty.

The first issue is: Did the defendant use “deadly force?”

“Deadly Force” means force which the defendant uses with the intent of causing, or which he/she knows to create a substantial risk of causing, death or serious bodily injury.

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

[Intentionally firing a firearm in the direction of another person or in the direction which the person is believed to be constitutes deadly force.]

[A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor’s intent is limited to creating an apprehension that he/she will use deadly force if necessary, does not constitute deadly force.]

If you determine that the defendant used “deadly force,” then you are to proceed to the section in this instruction entitled “Deadly Force Used.” If you determine that the defendant did not use “deadly force,” then you are to proceed to the section in this instruction entitled “Deadly Force Not Used.” You must then follow the law in the applicable section to determine the second issue, which is whether the force used by the defendant was justified.

Deadly Force Used

The use of deadly force upon or toward another person in defense of property is justified only if the defendant reasonably believes that such force is immediately necessary because:

[the person against whom the deadly force is used is attempting to dispossess the defendant of his/her dwelling other than under a claim of right to its possession]

[the person against whom the deadly force is used is attempting to commit [felony property damage][burglary][robbery][felony theft]* and:

[that person used or threatened deadly force [against the defendant] [in the defendant's presence]]

[the use of force other than deadly force by the defendant to prevent [felony property damage][burglary][robbery][felony theft] would expose the defendant or another person in the defendant's presence to a substantial risk of serious bodily injury.]

The reasonableness of the defendant's belief that the use of protective deadly force in defense of property was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be when the deadly force was used.

Deadly Force Not Used

The use of force upon or toward another person in defense of property is justified if the defendant reasonably believes that such force is immediately necessary:

[To prevent criminal trespass or burglary* in a building or upon real property in the defendant's possession, or in the possession of another person for whose protection the defendant acts]

[To prevent unlawful entry upon real property in the defendant's possession, or in the possession of another person for whose protection the defendant acts]

[To prevent theft, criminal mischief, or any trespassory taking of,* any tangible movable property in the defendant's possession, or in the possession of another person for whose protection the defendant acts.]

The reasonableness of the defendant's belief that the use of protective force in defense of property was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be when the force was used.

The defendant may use such force as he/she believes is necessary to protect the threatened property, provided that the defendant first requests that the person stop the interference with the property. However, the defendant need not make such a request if the defendant reasonably believes:

[Such a request would be useless]

[It would be dangerous to the defendant or another person to make the request]

[Substantial harm would be done to the physical condition of the property that is sought to be protected before the request could effectively be made.]

[The use of confinement as protective force is justifiable only if the defendant takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she can do so with safety to the property, unless the person confined has been arrested on a charge of crime.]

**For Offenses Where the Requisite State
of Mind is Reckless or Negligent**

[The use of force upon or toward another person in defense of property is not available for the offense(s) of (specify any offense in which the requisite state of mind is either recklessness or negligence) if the prosecution proves:

- (1) The defendant was reckless in believing that he/she was justified in using deadly force or force in defense of property; or
- (2) The defendant was reckless in acquiring or failing to acquire any knowledge or belief which was material to the justifiability of his/her use of deadly force or force in defense of property.]

Note

*The court should provide instructions on the elements of any applicable triggering felony offense.

7.18A. Defense of Property When The Use Of “Deadly Force” Is At Issue

The use of force in the defense of property is a defense to the charge(s) of (specify charge and its included offenses). The use of force in defense of property involves consideration of two issues. First, you must determine whether the defendant did or did not use “deadly force.” Second, you must determine whether the force used was justified. The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justified. If the prosecution does not meet its burden, then you must find the defendant not guilty.

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- (1) The defendant was reckless in believing that he/she was justified in using deadly force or force in defense of property; or
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*The court should provide instructions on the elements of any applicable triggering felony offense.

7.18B. Defense of Property When The Use Of “Deadly Force” Is Not At Issue

The use of force in the defense of property is a defense to the charge(s) of (specify charge and its included offenses). The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justified. If the prosecution does not meet its burden, then you must find the defendant not guilty.

The use of force upon or toward another person in defense of property is justified if the defendant reasonably believes that such force is immediately necessary:

[To prevent criminal trespass or burglary* in a building or upon real property in the defendant’s possession, or in the possession of another person for whose protection the defendant acts]

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*The court should provide instructions on the elements of any applicable triggering felony offense.

9.00. Definitions of Terms Used in Chapter 9, Pattern Jury Instructions

'Bodily injury' means physical pain, illness, or any impairment of physical condition.

'Compulsion' means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

'Dangerous instrument' means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

'Deviate sexual intercourse' means any act of sexual gratification between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

'Married' includes persons legally married, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

'Mentally defective' means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of his/her conduct.

'Mentally incapacitated' means a person rendered temporarily incapable of appraising or controlling his/her conduct owing to the influence of a substance administered to him/her without his/her consent.

'Physically helpless' means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

'Relative' means parent, ancestor, brother, sister, uncle, or legal guardian.

'Restrain' means to restrict a person's movement in such a manner as to interfere substantially with his liberty:

(a) by means of force, threat, or deception; or

(b) if the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of him.

'Serious bodily injury' means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

'Sexual contact' means any touching, other than acts of 'sexual penetration', of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

'Sexual penetration' means:

(1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. "Genital opening" includes the anterior surface of the vulva or labia majora*; or

(2) Cunnilingus or anilingus, whether or not actual penetration has occurred.

'Strong compulsion' means the use of or attempt to use one or more of the following to overcome a person:

(a) a threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnaped;

(b) a dangerous instrument; or

(c) physical force.

'Substantial bodily injury' means:

(a) a major avulsion, major laceration, or major penetration of the skin[±]; or

(b) a burn of at least second degree severity; or

(c) a bone fracture; or

(d) a serious concussion; or

(e) a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

Notes

*Definition of "genital opening" applicable to offenses occurring on or after June 22, 2006.

~~†See *State v. Tanielu*, 82 Hawai'i 373, 379, 922 P.2d 986, 992 (1996), holding that in "a plain reading of HRS § 707-700 'major' modifies 'avulsion, lacerations, or penetrations of the skin.'"~~

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[†]See *State v. Tanielu*, 82 Hawai`i 373, 379, 922 P.2d 986, 992 (1996), holding that in “a plain reading of HRS § 707-700 ‘major’ modifies ‘avulsion, lacerations, or penetrations of the skin.’”

10.00. Definitions of Terms Used in Chapter 10, Pattern Jury Instructions

“Another” means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions. (The definition of this term is taken from HRS § 701-118)

“Building” includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

“Cable television service” means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally.

“Cable television service device” means any mechanical or electronic instrument, apparatus, equipment or device which can be used to obtain cable television services without payment of applicable charges therefor. A “cable television service device” does not include any instrument, apparatus, equipment, device, facility or any component thereof furnished by a cable operator in the ordinary course of its business.

“Cardholder” means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

“Control over the property” means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property.

“Credit card” means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value.

“Deception” occurs when a person knowingly:

(a) creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that

impediment is or is not valid, or is or is not a matter of official record; or

(e) promises performance which he/she does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

"Deprive" means:

(a) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it; or

(c) to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) to sell, give, pledge, or otherwise transfer any interest in the property; or

(e) to subject the property to the claim of a person other than the owner.

"Distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"Dwelling" means a building which is used or usually used by a person for lodging.

"Enter or remain unlawfully" means [~~person "enters or remains unlawfully"~~] to enter or remain in or upon premises when [~~he/she~~] the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of [~~his/her~~] the person's intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless [~~he/she~~] the person defies a lawful order not to enter or remain, personally communicated to [~~him/her~~] the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

"Expired credit card" means a credit card which is no longer valid because the term shown on the credit card has elapsed.

"Government" means the United States, or any state, county, municipality, or

other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Intent to defraud" means:

(a) an intent to use deception to injure another's interest which has value; or

(b) knowledge by the defendant that he is facilitating an injury to another's interest which has value.

"Issuer" means the business organization or financial institution which issues a credit card or its agent.

"Obtain" means when used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another.

"Owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

"Person," "he," "him," "actor," and "defendant" include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person's name is known, and, where relevant, a corporation or an unincorporated association. (The definition of these terms is from HRS § 701-118)

"Premises" includes any building and any real property.

"Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

"Property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful.

"Receives" or "receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

“Revoked credit card” means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

“Services” includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

“Stolen” means obtained by theft or robbery.

“Unauthorized control over property” means control over property of another which is not authorized by the owner.

“Widely dangerous means” includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

10.00. Definitions of Terms Used in Chapter 10, Pattern Jury Instructions

“Another” means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions. (The definition of this term is taken from HRS § 701-118)

“Building” includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

“Cable television service” means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally.

“Cable television service device” means any mechanical or electronic instrument, apparatus, equipment or device which can be used to obtain cable television services without payment of applicable charges therefor. A “cable television service device” does not include any instrument, apparatus, equipment, device, facility or any component thereof furnished by a cable operator in the ordinary course of its business.

“Cardholder” means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

“Control over the property” means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property.

“Credit card” means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value.

“Deception” occurs when a person knowingly:

(a) creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that

impediment is or is not valid, or is or is not a matter of official record; or

(e) promises performance which he/she does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

"Deprive" means:

(a) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it; or

(c) to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) to sell, give, pledge, or otherwise transfer any interest in the property; or

(e) to subject the property to the claim of a person other than the owner.

"Distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"Dwelling" means a building which is used or usually used by a person for lodging.

"Enter or remain unlawfully" means to enter or remain in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person's intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

"Expired credit card" means a credit card which is no longer valid because the term shown on the credit card has elapsed.

"Government" means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department,

agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Intent to defraud" means:

(a) an intent to use deception to injure another's interest which has value; or

(b) knowledge by the defendant that he is facilitating an injury to another's interest which has value.

"Issuer" means the business organization or financial institution which issues a credit card or its agent.

"Obtain" means when used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another.

"Owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

"Person," "he," "him," "actor," and "defendant" include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person's name is known, and, where relevant, a corporation or an unincorporated association. (The definition of these terms is from HRS § 701-118)

"Premises" includes any building and any real property.

"Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

"Property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful.

"Receives" or "receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

“Revoked credit card” means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

“Services” includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

“Stolen” means obtained by theft or robbery.

“Unauthorized control over property” means control over property of another which is not authorized by the owner.

“Widely dangerous means” includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

**10.01. Burglary in the First Degree – Dangerous Instrument:
H.R.S. § 708-810(1)(a)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the First Degree.

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters ~~a building~~ unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she is armed with a dangerous instrument in the course of committing the offense.

There are three material elements of the offense of Burglary in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered ~~a building~~ unlawfully into a building] [remained unlawfully in a building]; and

2. That[;] the Defendant[;] had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant was intentionally armed with a dangerous instrument in the course of committing the offense.

An act occurs 'in the course of committing the offense' if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

Notes

H.R.S. §§ 708-810(1)(a) and (2), 708-840(2), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 -- "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00-- "building"

10.00-- "enter or remain unlawfully"

10.00-- "premises"

For definition of terms not defined by HRS Chapter 708, see instruction 9.00 – “dangerous instrument.” See also instruction 10.27 for definition of “dangerous instrument” as defined by H.R.S. § 708-840.

For statutory parameters of a “crime,” see HRS § 701-107.

**10.01. Burglary in the First Degree – Dangerous Instrument:
H.R.S. § 708-810(1)(a)**

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the First Degree.

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she is armed with a dangerous instrument in the course of committing the offense.

There are three material elements of the offense of Burglary in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered unlawfully into a building] [remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant was intentionally armed with a dangerous instrument in the course of committing the offense.

An act occurs 'in the course of committing the offense' if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

Notes

H.R.S. §§ 708-810(1)(a) and (2), 708-840(2), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 -- "intentionally"

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00– "building"

10.00– "enter or remain unlawfully"

10.00– "premises"

For definition of terms not defined by HRS Chapter 708, see instruction 9.00 – “dangerous instrument.” See also instruction 10.27 for definition of “dangerous instrument” as defined by H.R.S. § 708-840.

For statutory parameters of a “crime,” see HRS § 701-107.

10.02. Burglary in the First Degree – Bodily Injury: H.R.S. § 708-810(1)(b)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the First Degree.

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters ~~a building~~] unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she intentionally inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense.

There are three material elements of the offense of Burglary in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered ~~a building~~] unlawfully into a building] [remained unlawfully in a building]; and

2. That~~;~~ the Defendant~~;~~ had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant intentionally inflicted or attempted to inflict bodily injury on anyone in the course of committing the offense.

An act occurs “in the course of committing the offense” if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

Notes

H.R.S. §§ 708-810(1)(b) and (2), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “enter or remain unlawful”

10.00 – “premises”

For definition of terms not defined by HRS Chapter 708, see instruction:

9.00 – “bodily injury”

For statutory parameters of a “crime,” see HRS § 701-107.

For instructions regarding Attempt, see HRS Chapter 14.

10.02. Burglary in the First Degree – Bodily Injury: H.R.S. § 708-810(1)(b)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the First Degree.

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she intentionally inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense.

There are three material elements of the offense of Burglary in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These three elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered unlawfully into a building] [remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant intentionally inflicted or attempted to inflict bodily injury on anyone in the course of committing the offense.

An act occurs “in the course of committing the offense” if it occurs in effecting entry or while in the building, or in immediate flight therefrom.

Notes

H.R.S. §§ 708-810(1)(b) and (2), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “enter or remain unlawful”

10.00 – “premises”

For definition of terms not defined by HRS Chapter 708, see instruction:

9.00 – “bodily injury”

For statutory parameters of a “crime,” see HRS § 701-107.

For instructions regarding Attempt, see HRS Chapter 14.

10.03. Burglary in the First Degree – Dwelling: H.R.S. § 708-810(1)(c)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the First Degree.

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters ~~a building~~] unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

There are four material elements of the offense of Burglary in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered ~~a building~~] unlawfully into a building] [remained unlawfully in a building]; and

2. That[;] the Defendant[;] had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant recklessly disregarded the risk that the building was the dwelling of another; and

4. That the building was a dwelling of another.

Notes

H.R.S. §§ 708-810(1)(c), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “dwelling”

10.00 – “enter or remain unlawfully”

10.00 – “premises”

For statutory parameters of a “crime,” see H.R.S. § 701-107.

10.03. Burglary in the First Degree – Dwelling: H.R.S. § 708-810(1)(c)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the First Degree.

A person commits the offense of Burglary in the First Degree if he/she intentionally [enters unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights, and he/she recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

There are four material elements of the offense of Burglary in the First Degree, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered unlawfully into a building] [remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant recklessly disregarded the risk that the building was the dwelling of another; and

4. That the building was a dwelling of another.

Notes

H.R.S. §§ 708-810(1)(c), 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “dwelling”

10.00 – “enter or remain unlawfully”

10.00 – “premises”

For statutory parameters of a “crime,” see H.R.S. § 701-107.

10.04. Burglary in the Second Degree: H.R.S. § 708-811

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the Second Degree.

A person commits the offense of Burglary in the Second Degree if he/she intentionally [enters ~~a building~~] unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights.

There are two material elements of the offense of Burglary in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered ~~a building~~] unlawfully into a building] [remained unlawfully in a building]; and

2. That~~[,]~~ the Defendant~~[,]~~ had the intent to commit therein a crime against a person or against property rights.

Notes

H.R.S. §§ 708-811, 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “enter or remain unlawfully”

10.00 – “premises”

For statutory parameters of a “crime,” see H.R.S. § 701-107.

10.04. Burglary in the Second Degree: H.R.S. § 708-811

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary in the Second Degree.

A person commits the offense of Burglary in the Second Degree if he/she intentionally [enters unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights.

There are two material elements of the offense of Burglary in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered unlawfully into a building] [remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights.

Notes

H.R.S. §§ 708-811, 702-206(1); *State v. Mahoe*, 89 Hawai'i 284, 972 P.2d 287 (1998).

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “enter or remain unlawfully”

10.00 – “premises”

For statutory parameters of a “crime,” see H.R.S. § 701-107.

**10.04A. Burglary of a Building During a Civil Defense Emergency
or Disaster Relief Period: H.R.S. § 708-818**

(Applicable to offenses occurring on or after May 22, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary of a Building During a Civil Defense Emergency or Disaster Relief Period.

A person commits the offense of Burglary of a Building During a Civil Defense Emergency or Disaster Relief Period if during a [civil defense emergency][disaster relief period], the defendant intentionally [enters ~~a building~~ unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights.

There are four material elements of the offense of Burglary of a Building During a Civil Defense Emergency or Disaster Relief Period, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered ~~a building~~ unlawfully into a building][remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant's foregoing behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, H.R.S.]; and

4. That the Defendant recklessly disregarded the risk that his/her behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, H.R.S.].

Notes

H.R.S. § 708-818.

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “enter or remain unlawfully”

10.00 – “premises”

For statutory parameters of a “crime,” see H.R.S. § 701-107.

**10.04A. Burglary of a Building During a Civil Defense Emergency
or Disaster Relief Period: H.R.S. § 708-818**

(Applicable to offenses occurring on or after May 22, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Burglary of a Building During a Civil Defense Emergency or Disaster Relief Period.

A person commits the offense of Burglary of a Building During a Civil Defense Emergency or Disaster Relief Period if during a [civil defense emergency][disaster relief period], the defendant intentionally [enters unlawfully into a building] [remains unlawfully in a building], with intent to commit therein a crime against a person or against property rights.

There are four material elements of the offense of Burglary of a Building During a Civil Defense Emergency or Disaster Relief Period, each of which the prosecution must prove beyond a reasonable doubt.

These four elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant intentionally [entered unlawfully into a building][remained unlawfully in a building]; and

2. That the Defendant had the intent to commit therein a crime against a person or against property rights; and

3. That the Defendant's foregoing behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, H.R.S.]; and

4. That the Defendant recklessly disregarded the risk that his/her behavior occurred during [the time of a civil defense emergency proclaimed by the governor pursuant to the Civil Defense and Emergency Act within the area covered by the civil defense emergency] [the period of disaster relief under Chapter 127, H.R.S.].

Notes

H.R.S. § 708-818.

For definition of states of mind, see instruction:

6.02 – “intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00 – “building”

10.00 – “enter or remain unlawfully”

10.00 – “premises”

For statutory parameters of a “crime,” see H.R.S. § 701-107.