

OUJI-CR 2-19A
CONSPIRACY – CO-CONSPIRATORS ARE JOINTLY LIABLE

When a conspiracy is entered into to do an unlawful act, the conspirators are responsible for all that is said and done in furtherance of the conspiracy by their co-conspirators. If two or more persons conspire to commit a crime, each is criminally responsible for the acts of **his/her** co-conspirators in furtherance of the conspiracy, or where the connection between the acts and the conspiracy is reasonably apparent.

Therefore, if you find beyond a reasonable doubt that [**Name of Defendant**] was a member of a conspiracy, and that **another/other conspirator(s)** committed the crime of [**Specify Crime**] in furtherance of, or as a foreseeable consequence of, the conspiracy, then you may find [**Name of Defendant**] guilty of [**Specify Crime**], even though [**Name of Defendant**] may not have participated in any of the acts that constitute the crime of [**Specify Crime**].

Committee Comments

For discussions of the law of conspiracy in Oklahoma, see *Littlejohn v. State*, 2008 OK CR 12, 181 P.3d 736, and *Hatch v. State*, 1983 OK CR 47, 662 P.2d 1377.

OUI-CR 4-77
DEATH PENALTY PROCEEDINGS - CIRCUMSTANTIAL EVIDENCE -
EXCLUDING REASONABLE THEORIES OTHER THAN
EXISTENCE OF AGGRAVATING CIRCUMSTANCE

The State relies **[in part]** upon circumstantial evidence for proof of the aggravating **circumstance(s)** of **[Specify the Aggravating Circumstance(s) That Is/Are Applicable]**. In order to warrant a finding of any aggravating circumstance or circumstances upon circumstantial evidence, each fact necessary to prove the existence of the circumstance must be established by the evidence beyond a reasonable doubt. All the facts necessary to such proof must be consistent with each other and with the conclusion the State seeks to establish. All of the facts and circumstances, taken together, must be inconsistent with any reasonable theory or conclusion other than the existence of the aggravating circumstance. All of the facts and circumstances, taken together, must establish to your satisfaction the existence of the aggravating circumstance beyond a reasonable doubt.

Notes on Use

This instruction may be given when the prosecution relies on circumstantial evidence for proof of an aggravating circumstance. The trial judge shall give OUI-CR 9-2 through 9-4 along with this instruction.

Committee Comments

This instruction is adapted from former OUI-CR 804 (currently OUI-CR 9-5), which was written for cases where circumstantial evidence is used to establish the defendant's guilt. In *Snow v. State*, 1994 OK CR 39, ¶ 33, 876 P.2d 291, 299 (Ok.Cr. 1994), the Oklahoma Court of Criminal Appeals found that when circumstantial evidence is used to support an aggravating circumstance, the circumstantial evidence must rule out all other reasonable hypotheses.

The Oklahoma Court of Criminal Appeals has summarized the rules concerning the giving of former OUJI-CR 804 as follows:

[O]ne, it is error for the trial court not to instruct the jury, even though no request is made, when all the evidence relied upon is circumstantial; two, when the evidence is both direct and circumstantial, it is not error to fail to give an instruction when none is requested; and three, the failure to give an instruction where all of the evidence is circumstantial and no request is made, is not reversible error unless the evidence against the defendant is inherently weak or improbable.

Grimmett v. State, 1977 OK CR 320, ¶ 5, 572 P.2d 272, 274 (Ok. Cr. 1977).

In *Lay v. State*, 2008 OK CR 7, 179 P.3d 615, the trial court modified this instruction by eliminating the reasonable hypothesis test in its third and fourth sentences in order to conform to *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559. The Oklahoma Court of Criminal Appeals stated in *Lay*, however, that the “reasonable hypothesis” test was “still the required jury instruction for aggravating circumstances proven, entirely or in part, by circumstantial evidence.” Nevertheless, the Court of Criminal Appeals affirmed the death sentence, because the defendant had failed to object at trial and consequently, the error had been waived. 2008 OK CR 7 at ¶ 29, 179 P.3d at 623. Accordingly, this instruction should continue to be used for the second stage of death penalty cases.

OUI-CR 8-15
DEFENSE OF PERSON -
JUSTIFIABLE USE OF DEADLY FORCE AGAINST INTRUDER

~~A/An resident/tenant/occupant of a house/apartment/dwelling is justified in using physical force, including deadly force, against another person who has unlawfully entered the house/apartment/dwelling if the resident/tenant/occupant reasonably believes that the other person might use any physical force, no matter how slight, against any resident/tenant/occupant of the house/apartment/dwelling.~~

A person is justified in using force that is intended or likely to cause death or great bodily harm to another person who (was in the process of unlawfully and forcefully entering)/(unlawfully and forcibly entered) a dwelling/residence/(occupied vehicle) if the person using the force knew or had reason to believe that an unlawful and forcible entry (was occurring)/(had occurred).

OR

A person is justified in using force that is intended or likely to cause death or great bodily harm if the person against whom the force was used (had attempted to remove)/(was attempting to remove) another person against the will of that other person from a dwelling/residence/(occupied vehicle) and the person using

the force knew or had reason to believe that an unlawful and forcible removal/(attempt to remove) (was occurring)/(had occurred).

[A person is not justified in using force if:

The person against whom the force is used (has the right to be in)/(is a lawful resident of) the dwelling/residence/(occupied vehicle), such as an owner, lessee, or titleholder), and there is not a (protective order from domestic violence in effect)/(a written pretrial supervision order of no contact) against that person.

OR

The person or persons sought to be removed are children/grandchildren/(in the lawful custody/(under the lawful guardianship) of the person against whom the force is used.

OR

The person who uses force is (engaged in)/(using the dwelling/residence/(occupied vehicle) to further an unlawful activity.]

["Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to

be occupied by people.]

["Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.]

["Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.]

Statutory Authority: 21 O.S.Supp. ~~1995~~ 2008, § 1289.25 (B), (C), (F).

Notes on Use

~~This instruction is appropriate where the defendant reasonably believed that the victim might use physical force against an occupant of the dwelling. In contrast, OUI-CR-8-14, supra, should be used if the defendant reasonably believed that the victim was attempting to commit a felony in a dwelling where the defendant was lawfully present. The bracketed language should be given only where supported by the evidence at trial.~~

Committee Comments

~~The Court of Criminal Appeals has not yet ruled on the constitutionality of 21 O.S. 1991, § 1289.25, on which this instruction is based.~~

**OUI-CR 8-15A
DEFENSE OF PERSON -
RIGHT TO STAND YOUR GROUND**

A person has no duty to retreat and has the right to stand **his/her** ground and meet force with force, including deadly force, if **he/she** is not engaged in an unlawful activity and is attacked in any place where **he/she** has a right to be, if **he/she** reasonably believes it is necessary to do so to prevent **(death/(great bodily harm) to himself/herself/ another)/(the commission of a forcible felony)**.

Statutory Authority: 21 O.S.Supp. 2007, § 1289.25 (D), (F).

Notes on Use

This Instruction is a type of self-defense instruction, but it includes justification for the use of deadly force to prevent death or great bodily harm to another or the commission of a forcible felony. See also the self-defense instructions in OUI-CR 8-45 to 8-56, *infra*. It should be used only if the attack occurred outside of a dwelling, residence, or occupied vehicle.

OUI-CR 9-20
EVIDENCE - IMPEACHMENT BY
PRIOR INCONSISTENT STATEMENTS

Evidence has been presented that on some prior occasion **(the defendant)/** **([Name of Witness]) (made a statement)/(acted in a manner)** inconsistent with **his/ her** testimony in this case. This evidence is called impeachment evidence and it is offered to show that the **defendant's/witness's** testimony is not believable or truthful. If you find that **(a statement was made)/(the acts occurred)**, you may consider this impeachment evidence in determining what weight and credit to give the testimony of **(the defendant)/(that witness)**. You may not consider this impeachment evidence as proof of innocence or guilt. You may consider this impeachment evidence only to the extent that you determine it affects the believability of the **defendant/witness**, if at all.

[However, if you find the statements of **(the defendant)/ ([Name of Witness])** were made **[Specify When, Where, and To Whom the Statements Were Made]**, the statements may also be considered as proof of innocence or guilt.]

Notes on Use

The bracketed paragraph should be used if there were any prior inconsistent statements admitted at trial that the jury may also consider for proof of innocence or guilt, either because they are not hearsay under the definitions in 12 O.S.Supp. 2008, § 2801, or because they come within any of the exceptions to the hearsay rule in 12 O.S.Supp. 2008, §§ 2803, 2804. The instruction should

clearly specify which prior inconsistent statements may also be used for substantive purposes.

The trial court should be especially careful when giving more than one limiting instruction to avoid inconsistencies between them. *See Lewis v. State*, 1998 OK CR 24 ¶ 22, 970 P.2d 1158, 1168 (limiting instructions on other crimes evidence and the basis of opinion testimony were confusing and contradictory when given together because the only evidence of other crimes came in as the basis of opinion testimony).

Committee Comments

Many Oklahoma cases place the onus on the trial court of clearly informing the jury as to the restricted permissible use of impeachment evidence. *See, e.g., Pettigrew v. State*, 1959 OK CR 116, 346 P.2d 957; *Gillaspy v. State*, 1953 OK CR 38, ~~96 Okl. Cr. 347~~, 255 P.2d 302, ~~96 Okl. Cr. 347 (1953)~~; *Farley v. State*, 1950 OK CR 163, ~~93 Okl. Cr. 192~~, 226 P.2d 1002, ~~93 Okl. Cr. 192 (1954)~~; *Akins v. State*, 1950 OK CR 28, ~~91 Okl. Cr. 47~~, 215 P.2d 569, ~~91 Okl. Cr. 47 (1950)~~; *Dunham v. State*, 1943 OK CR 126, ~~78 Okl. Cr. 54~~, 141 ~~143~~ P.2d 855 ~~834~~, ~~78 Okl. Cr. 54 (1944)~~; *Broshears v. State*, 1920 OK CR 35, ~~17 Okl. Cr. 192~~, 187 P. 254, ~~17 Okl. Cr. 192 (1920)~~; *Thomas v. State*, 1917 OK CR 103, ~~13 Okl. Cr. 414~~, 164 P. 995, ~~13 Okl. Cr. 414 (1917)~~; *Sturgis v. State*, 1909 OK CR 66, ~~2 Okl. Cr. 362~~, 102 P. 57, ~~2 Okl. Cr. 362 (1909)~~. Refusal to give this limiting instruction upon request is reversible error. *Cloud v. State*, 1929 OK CR 25, ~~41 Okl. Cr. 395~~, 273 P. 1012, ~~41 Okl. Cr. 395 (1929)~~; *Thomas v. State, supra*. The Court of Criminal Appeals has held that under certain circumstances, such as where a substantial part of the State's presentation of evidence consists of impeachment of the in-court testimony of its own witnesses, a "positive duty" devolves upon the court to admonish the jurors with respect to the proper use they may make of impeachment evidence, and failure to fulfill this obligation constitutes reversible error. *Leeks v. State*, 1952 OK CR 110, ~~95 Okl. Cr. 326~~, 245 P.2d 764, ~~95 Okl. Cr. 326 (1952)~~. The court has termed the failure to instruct concerning the limited effect of impeachment evidence as harmless error where such evidence was not deemed to form a substantial part of the State's case. *Sykes v. State*, 1977 OK CR 311, 572 P.2d 247; *Foreman v. State*, 1927 OK CR 249, ~~38 Okl. Cr. 50~~, 259 P. 176, ~~38 Okl. Cr. 50 (1927)~~. However, the Commission is of the opinion that this limiting instruction should be given on the court's own motion in every instance of impeachment, particularly where the impeachment evidence consists of substantively inadmissible statements of the defendant admitted for the limited purpose of affecting his credibility under the rule of *Harris v. New York*, 401 U.S. 222 (1971).

Section 2607 of the Oklahoma Evidence Code, 12 O.S.1991, § 2607, constitutes a major change in Oklahoma law by providing: "The credibility of a witness may be attacked by any party, including the party calling him." Thus, to forestall potential abuse of this provision by use of a witness at trial solely in order to impeach him with a substantively inadmissible prior inconsistent statement, the Commission reiterates that this limiting instruction should be given

by the trial judge in every instance of impeachment, whether requested or not. Section 2613, 12 O.S.1991, § 2613, sets forth the formal requirements for impeachment of a witness by prior inconsistent statements.

In *Omalza v. State*, 1995 OK CR 80, ¶¶ 50-54, 65-66, 911 P.2d 286, 303, 305, the jury was given contradictory instructions on the use of prior inconsistent statements, and the Oklahoma Court of Criminal Appeals ruled that these instructions were inadequate to properly inform the jury of the applicable law.

OUJI-CR 10-13C
MANDATORY POST-IMPRISONMENT SUPERVISION

You are advised that if you recommend a sentence of imprisonment for two years or more, [**Name of Defendant**] shall be required to serve a term of post-imprisonment community supervision under conditions determined by the Department of Corrections, in addition to the actual imprisonment. The term of post-imprisonment community supervision shall be for at least three years, and if you recommend a sentence of imprisonment for two years or more, I will determine the actual term of post-imprisonment community supervision after your verdict.

Statutory Authority: 22 O.S.Supp. 2008, § 991a(A)(1)(f), 10 O.S.Supp. 2008, §7115, 21 O.S. 2008, §§ 681, 741, 843.1, 867, 885, 886, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and 1123

Notes on Use

This instruction must be given for the following offenses that are listed in 22 O.S.Supp. 2008, § 991a(A)(1)(f): 10 O.S.Supp. 2008, §7115, 21 O.S. 2008, §§ 681, 741, 843.1 (for offenses involving sexual abuse or sexual exploitation) and 21 O.S.Supp. 2008, §§ 867, 885, 886, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and 1123.

OUI-CR 11-3
COMPETENCY - DEFINITIONS

It is necessary that you understand what certain terms used in these instructions mean in the law. The following definitions apply here:

1. "Competent" or "competency" means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against **him/her** and to effectively and rationally assist in **his/her** defense.

2. "Dangerous" means:

(a) a person who poses a substantial risk of immediate physical harm to himself/herself, as shown by evidence of serious threats of or attempts at suicide or other significant self-inflicted bodily harm;

(b) a person who poses a substantial risk of immediate physical harm to another person or persons, as shown by evidence of violent behavior directed toward another person or persons;

(c) a person who placed another in a reasonable fear of violent behavior directed towards the other person or serious physical harm as shown by serious and immediate threats,

(d) there is a substantial risk that without immediate intervention severe impairment or injury will result to the person alleged to require treatment; or

(e) who poses a substantial risk of immediate serious physical injury or death to **himself/herself**, as shown by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community; but

(f) a person who is homeless is not necessarily considered dangerous unless the person also meets the requirements just described.

3 2. "Incompetent" or "incompetency" means any person who is not presently competent. A person may be incompetent due to physical disability.

~~3. "Mentally ill person" means a person with a substantial disorder of thought, mood, or memory that significantly impairs **his/her** ability to recognize reality or to meet the ordinary demands of life.~~

4. "Mentally retarded person" means a person who ~~does not have the mental ability to manage **himself/herself** and **his/her** affairs, and who requires supervision, control or care for **his/her** own welfare or the welfare of others or of the community~~ has significantly subaverage functioning, IQ of less than 70, manifested before age 18 and existing concurrently with related limitations in two or more of the following applicable adaptive skill areas:

1. Communication;

2. Self-care;

- 3. Home living;
- 4. Social skills;
- 5. Use of community resources;
- 6. Self-direction;
- 7. Health and safety;
- 8. Functional academics;
- 9. Leisure; and
- 10. Work.

5. "Person requiring treatment" means either:

(1) A person who ~~as a result of~~ represents a risk of harm to self or others because of mental illness ~~can be expected within the near future to seriously and physically injure himself/herself or another person and who has engaged in one or more recent actions or made significant recent threats that substantially support that expectation;~~ or

(2) A person who ~~as a result of~~ mental illness ~~is unable to take care of his basic physical needs such as food, clothing or shelter and who has shown his/her inability by failing to attend to those basic physical needs in the recent past~~ is a drug- or alcohol-dependent person and who represents a risk of harm to self or other as a result of drug dependency; or

~~(3) A person who appears to require inpatient treatment (for a previously diagnosed history of)/(due to the appearance of symptoms of) schizophrenia/(bipolar disorder)/(major depression with suicidal intent) to prevent the mental illness from getting worse; but a~~

~~(4) A person requiring treatment is neither a person whose mental ability has simply been weakened by old age, a mentally retarded person, nor a person with epilepsy not~~

(1) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,

(2) a mentally retarded or developmentally disabled person,

(3) a person with seizure disorder,

(4) a person with a traumatic brain injury, or

(5) a person who is homeless,

unless **he/she** also meets the other requirements just described.

6. A reasonable period of time for correction of incompetency through treatment, therapy or training for this particular case is [Specify Applicable Period Time from 22 O.S.Supp. 2008 § 1175.1].

Notes on Use
Committee Comments

These definitions are taken from 10 O.S. Supp. 2008 § 1408, 22 O.S.1991 Supp. 2008 § 1175.1 and 43A O.S.1994 Supp. 2008 § 1-103, but they have been modified to make them easier to follow. Trial courts are encouraged to modify

the definitions further to increase juror comprehension by, ~~for example,~~ eliminating portions of the definition that are not applicable to the particular case. For example, if there is no evidence that the defendant is drug- or alcohol-dependent, the part of the definition of a person requiring treatment should not include the reference to drug- or alcohol-dependency, because it would not be pertinent and could therefore be confusing to the jury. On the other hand, the judge should give the definition of a “mentally retarded person” even if there is no evidence offered that the defendant has an IQ of less than 70, because the jury is required by 22 O.S.Supp. 2008, § 1175.5 to make a finding with respect to whether the defendant is mentally retarded.

Committee Comments

In *Valdez v. State*, 1995 OK CR 18, ¶¶ 5-6, 900 P.2d 363, 369 (Okl. Cr. 1995), the Oklahoma Court of Criminal Appeals ruled that the definition of competence in 22 O.S. 1991 § 1175.1(1) satisfies Supreme Court standards.

~~The definition of a mentally retarded person is based on the definition of “mentally deficient person” in 43A O.S. 1981 § 3(f). Although the definition of a “mentally deficient person” was deleted from the statute when it was amended and recodified as 43A O.S. § 1-103 in 1986, the reference in 22 O.S. § 1175.5 to the definitions in Section 3 of Title 43A was not affected by the deletion of the definition from 43A O.S. 1991 § 1-103. See *Ex parte McMahan*, 94 Okl. Cr. 419, 421, 237 P.2d 462, 465 (1951) (absent a contrary legislative intent a provision of one statute that is adopted into another statute is not affected by the repeal of the adopted statute). The Committee considers the legislative language limiting mental retardation to deficiencies acquired at birth or an early age to be descriptive, not elemental nor exclusive as to cause or time of origin. For the treatment of persons determined to be mentally retarded, see 10 O.S. 1991 § 1410 et seq.~~

**OUJI-CR 11-5
EXPLANATION OF FORM**

In order for the Court to decide whether [**Name of Defendant**] should ~~(stand trial)~~/**(undergo further proceedings)**, it is necessary that you answer the questions on the verdict form.

The first question on the verdict form that you must answer is, "Is [**Name of Defendant**] incompetent to undergo further criminal proceedings at this time?" If the answer is no, you need not answer the other questions, and you should sign and return the verdict as explained later in these instructions. If the answer is yes, then go to the ~~next question~~ other questions.

~~The next question is, "Can the incompetency of [**Name of Defendant**] be corrected within a reasonable period of time by treatment, therapy or training?" If the answer is yes, you need not answer the other questions, and you should sign and return the verdict as explained later in these instructions. If the answer is no, then go to the last two questions on the verdict form, which are:~~

~~"Is the person mentally ill, mentally retarded or a person requiring treatment, as defined in these instructions?" and,~~

~~"Is the person a threat to the safety of himself or others if released?"~~

Committee Comments

~~22 O.S. 1991 § 1175.5 requires the jury to answer the questions set out in this instruction.~~

**OUI-CR 11-7
COMPETENCY - VERDICT FORM**

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR _____ COUNTY

THE STATE OF OKLAHOMA)
Plaintiff,)
)
vs.)
)
JOHN DOE,)
)
Defendant.)

Case No. _____

VERDICT

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

1. Is [**Name of Defendant**] incompetent to undergo further criminal proceedings at this time?

YES _____
NO _____

If your answer is no, you need not answer the remainder of the questions. If your answer is yes, then proceed to the next question.

2. Can the incompetency of ~~the petitioner~~ [**Name of Defendant**] be corrected within a reasonable period of time ~~by through~~ treatment, therapy or training? In this case, a reasonable period of time is defined to be [**Specify Applicable Period of Time from 22 O.S. § 1175.1**].

YES _____
NO _____

~~If your answer is yes, you need not answer the remainder of the questions. If your answer is no, then answer questions 3 and 4 below.~~

3. Is ~~the person mentally ill,~~ [Name of Defendant] mentally retarded ~~or a person requiring treatment~~ as defined in these instructions?

YES _____
NO _____

4. Is [Name of Defendant] a person requiring treatment as defined in these instructions?

YES _____
NO _____

5. If the answers to questions 3 and 4 are no, why is [Name of Defendant] incompetent?

~~6~~ 4. Is ~~the person a threat to the safety of himself/herself or others~~ [Name of Defendant] presently dangerous as defined in these instructions if released?

YES _____
NO _____

_____	_____
Foreperson	
_____	_____
_____	_____

Committee Comments

The Oklahoma Legislature revised the questions that the jury must answer to determine competency in 2004, and this verdict form reflects the 2004 amendments. See 22 O.S.Supp. 2008, § 1175.5.