

DEATH PENALTY--PEREMPTORY INSTRUCTION--STATUTORY MITIGATING CIRCUMSTANCE(S).

*Note Well: This instruction is to be read to the jury only where there is sufficient un rebutted evidence, as a matter of law, to establish the existence of (a) statutory mitigating circumstance(s).*

The defendant has the burden of establishing this mitigating circumstance by the preponderance of the evidence, as I have explained to you.

Accordingly, as to this mitigating circumstance, I charge you that if one or more of you find the facts to be as all the evidence tends to show, you will answer "Yes" as to Mitigating Circumstance Number (*read number*) on the "Issues and Recommendation" form.

