

DEATH PENALTY--PEREMPTORY INSTRUCTION--NON-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) non-statutory mitigating circumstance (s). See State v. Lynch, 340 N.C. 435, 459 S.E.2d 679 (1995).*

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

All of the evidence tends to show (insert named non-statutory mitigating circumstance).

Accordingly, as to this circumstance, if one or more of you find the facts to be as all the evidence tends to show, you will find that this circumstance has been established. You must then consider whether this circumstance has mitigating value. If one or more of you find that this circumstance has been established and deem it to have mitigating value, then you will answer "Yes" as to Mitigating Circumstance Number (*read number*) on the "Issues and Recommendation" form.

