

150.10A (APP) DEATH PENALTY—ISSUES AND RECOMMENDATION AS TO PUNISHMENT.

NOTE WELL: When the jury retires to deliberate the punishment in a capital case, the judge shall furnish them a written list of issues relating to the aggravating or mitigating circumstances which arise from the evidence. N.C. Gen. Stat. § 15A-2000(b). When the jury recommends a sentence of death the foreperson shall sign the "Issues and Recommendation" form on behalf of the jury which shall show the requisite findings to support that sentence. N.C. Gen. Stat. § 15A-2000(c). The following pattern form combines the issues and the recommendation.

The judge, in each case, should use this "Issues and Recommendation", and should furnish this form to the jury. In preparing the actual form to be given to the jury, the judge should omit all the bracketed aggravating and mitigating circumstances which do not relate to the evidence in the case. The judge is required to add all non-statutory mitigating circumstances that arise from the evidence which are explained in the Note Well below and incorporate those into this form. The statutory and non-statutory mitigating circumstances are to be listed on this form in consecutive order. Also, make sure the reporter does not type the brackets themselves, and numbers the aggravating and mitigating circumstances which are incorporated in their own consecutive order.

Issue One-A should be included only if there is evidence that the defendant personally may not have committed the killing. See NOTE WELL, N.C.P.I.—Crim. 150.10. The designation of Issue One-A has been adopted to simplify the numbers of the remaining issues.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF
JUSTICE

SUPERIOR COURT DIVISION

No. _____

STATE OF NORTH CAROLINA)
)
Plaintiff)
)
vs.)
)
(Name defendant))
)
Defendant)
_____)

ISSUES AND
RECOMMENDATION

AS TO PUNISHMENT

ISSUES

Issue One-A:

Do you unanimously find from the evidence, beyond a reasonable doubt,
that the defendant:

[a. Killed or attempted to kill the victim;] (or)

[b. Intended to kill the victim;] (or)

[c. Intended that deadly force would be used in the course of the
underlying felony] (or)

[d. Was a major participant in the underlying felony and exhibited
reckless indifference to human life]?

Answer_____.

IF YOU ANSWER ISSUE ONE-A "NO," SKIP ISSUES ONE, TWO, THREE, AND FOUR AND INDICATE LIFE IMPRISONMENT UNDER "RECOMMENDATION AS TO PUNISHMENT" ON THE LAST PAGE OF THIS FORM. IF YOU ANSWERED ISSUE ONE-A "YES," PROCEED TO ISSUE ONE.

Issue One:

Do you unanimously find from the evidence, beyond a reasonable doubt, the existence of one or more of the following aggravating circumstances?

ANSWER_____.

BEFORE YOU ANSWER ISSUE ONE, CONSIDER EACH OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES. IN THE SPACE AFTER EACH AGGRAVATING CIRCUMSTANCE, WRITE "YES," IF YOU UNANIMOUSLY FIND THAT AGGRAVATING CIRCUMSTANCE FROM THE EVIDENCE BEYOND A REASONABLE DOUBT. WRITE, "NO," IF YOU DO NOT FIND THAT AGGRAVATING CIRCUMSTANCE FROM THE EVIDENCE BEYOND A REASONABLE DOUBT.

IF YOU WRITE, "YES," IN ONE OR MORE OF THE SPACES AFTER THE FOLLOWING AGGRAVATING CIRCUMSTANCES, WRITE, "YES," IN THE SPACE AFTER ISSUE ONE AS WELL. IF YOU WRITE, "NO," IN ALL OF THE SPACES AFTER THE FOLLOWING AGGRAVATING CIRCUMSTANCES, WRITE, "NO," IN THE SPACE AFTER ISSUE ONE.

(1) [Was the defendant lawfully incarcerated?

ANSWER_____]

(2) [Had the defendant been previously convicted of another capital felony?

ANSWER_____]

(3) [Had the defendant been previously convicted of a felony involving the [use] [threat] of violence to the person?

ANSWER_____]

(4A) [Was this murder committed for the purpose of [avoiding] [preventing] a lawful arrest?

ANSWER_____]

(4B) [Was this murder committed for the purpose of effecting an escape from custody?

ANSWER_____]

(5A) [Was this murder committed while the defendant was engaged in [the commission of] [an attempt to commit] [a flight after [committing] [attempting to commit]] (*name felony*)?

ANSWER_____]

(5B) [Was the murder committed while the defendant was an [aider] [abettor] in the [commission of] [attempt to commit] [flight after [committing] [attempting to commit]] (*name felony*)?¹

ANSWER_____]

(6) [Was this murder committed for pecuniary gain?

ANSWER_____]

(7A) [Was this murder committed to [disrupt] [hinder] the lawful exercise of a governmental function?

ANSWER_____]

(7B) [Was this murder committed to [disrupt] [hinder] the enforcement of the laws?

ANSWER_____]

(8A) [Was this murder committed against a (*describe victim's position*) while engaged in the performance of his official duties?

ANSWER_____]

(8B) [Was this murder committed against a (*describe victim's position*)² because of the exercise of his official duty?

ANSWER_____]

(9) [Was this murder especially heinous, atrocious or cruel?

ANSWER_____]

(10) [Did the defendant knowingly create a great risk of death to more than one person by means of a [weapon] [device] which would normally be hazardous to the lives of more than one person?

ANSWER_____]

(11) [Was this murder part of a course of conduct in which the defendant engaged and did that course of conduct include the commission by the defendant of other crimes of violence against other persons?

ANSWER_____]

IF YOU ANSWERED ISSUE ONE "NO," SKIP ISSUES TWO, THREE, AND FOUR, AND INDICATE LIFE IMPRISONMENT UNDER "RECOMMENDATION AS TO PUNISHMENT", ON THE LAST PAGE OF THIS FORM. IF YOU ANSWERED ISSUE ONE "YES," PROCEED TO ISSUE TWO.

Issue Two:

Do you find from the evidence the existence of one or more of the following mitigating circumstances?

ANSWER_____

NOTE WELL: List any of the following mitigating circumstances for which there is any evidence. In addition, if the defendant makes a timely request for a listing in writing of possible mitigating circumstances in addition to those listed here, and if they are supported by the evidence, and if those circumstances are such that the jury could possibly deem them to have mitigating value, add all such circumstances to the list as you prepare the form to be given to the jury. S. v. Johnson, 298 N.C. 47, 72, 74 (1979). If all the evidence indicates that the mitigating circumstances exist, the judge is required to give peremptory instructions. For peremptory instructions see N.C.P.I.—Crim. 150.11 and N.C.P.I.—Crim. 150.12.

BEFORE YOU ANSWER ISSUE TWO, CONSIDER EACH OF THE FOLLOWING MITIGATING CIRCUMSTANCES. IN THE SPACE AFTER EACH MITIGATING CIRCUMSTANCE, WRITE "YES," IF ONE OR MORE OF YOU FINDS THAT CIRCUMSTANCE BY A PREPONDERANCE OF THE EVIDENCE. WRITE, "NO," IF NONE OF YOU FINDS THAT MITIGATING CIRCUMSTANCE.

IF YOU WRITE, "YES," IN ONE OR MORE OF THE FOLLOWING SPACES, WRITE, "YES," IN THE SPACE AFTER ISSUE TWO AS WELL. IF YOU WRITE, "NO," IN ALL OF THE FOLLOWING SPACES, WRITE, "NO," IN THE SPACE AFTER ISSUE TWO.

(1) [The defendant has no significant history of prior criminal activity.

ANSWER_____ One or more of us finds this mitigating circumstance to exist.]

(2) [This murder was committed while the defendant was under the influence of mental or emotional disturbance.

ANSWER_____ One or more of us finds this
mitigating circumstance to exist.]

(3A) [The victim was a voluntary participant in the defendant's
homicidal act.

ANSWER_____ One or more of us finds this
mitigating circumstance to exist.]

(3B) [The victim consented to the defendant's homicidal act.

ANSWER_____ One or more of us finds this
mitigating circumstance to exist.]

(4) [This murder was actually committed by another person and the
defendant was only an [accomplice in] [accessory to] the murder
and his participation in the murder was relatively minor.

ANSWER_____ One or more of us finds this
mitigating circumstance to exist.]

(5A) [The defendant acted under duress.

ANSWER_____ One or more of us finds this
mitigating circumstance to exist.]

(5B) [The defendant acted under the domination of another person.

ANSWER_____ One or more of us finds this
mitigating circumstance to exist.]

(6) [The capacity of the defendant to appreciate the criminality of his
conduct or to conform his conduct to the requirements of the law
was impaired.

ANSWER_____ One or more of us finds this
mitigating circumstance to exist.]

(7) [The age of the defendant at the time of this murder is a mitigating circumstance.]

ANSWER_____ One or more of us finds this mitigating circumstance to exist.]

(8A) [The defendant aided in the apprehension of another capital felon.]

ANSWER_____ One or more of us finds this mitigating circumstance to exist.]

(8B) [The defendant testified truthfully on behalf of the prosecution in another prosecution of a felony.]

ANSWER_____ One or more of us finds this mitigating circumstance to exist.]

(9) *NOTE WELL: Here list the non-statutory mitigating circumstances requested by the defendant.*

ANSWER_____ One or more of us finds this circumstance to exist and deem it to have mitigating value.

NOTE WELL: Always include Number 10 following:

(10) Any other circumstance or circumstances arising from the evidence which one or more of you deems to have mitigating value.

ANSWER_____ One or more of us finds the mitigating circumstance to exist.

ANSWER ISSUE THREE IF YOU ANSWERED ISSUE TWO, "YES." IF YOU ANSWERED ISSUE TWO, "NO," SKIP ISSUE THREE AND ANSWER ISSUE FOUR.

Issue Three:

Do you unanimously find beyond a reasonable doubt that the mitigating circumstance or circumstances found is, or are, insufficient to outweigh the aggravating circumstance or circumstances found by you?

ANSWER_____

IF YOU ANSWER ISSUE THREE, "YES," PROCEED TO ISSUE FOUR. IF YOU ANSWER ISSUE THREE, "NO," INDICATE LIFE IMPRISONMENT UNDER "RECOMMENDATION AS TO PUNISHMENT."

Issue Four:

Do you unanimously find beyond a reasonable doubt that the aggravating circumstance or circumstances you found is, or are, sufficiently substantial to call for the imposition of the death penalty when considered with the mitigating circumstance or circumstances found by one or more of you?

ANSWER_____

IF YOU ANSWER ISSUE FOUR "YES," INDICATE DEATH UNDER "RECOMMENDATION AS TO PUNISHMENT." IF YOU ANSWER ISSUE FOUR, "NO," INDICATE LIFE IMPRISONMENT UNDER "RECOMMENDATION AS TO PUNISHMENT."

RECOMMENDATION AS TO PUNISHMENT

INDICATE YOUR RECOMMENDATION AS TO PUNISHMENT BY WRITING "DEATH," OR "LIFE IMPRISONMENT," IN THE BLANK IN THE FOLLOWING SENTENCE:

We, the jury, unanimously recommend that the defendant, (*name defendant*) be sentenced to_____.

This _____ day of _____, _____.

(signature)
Foreperson of the Jury

1. Only the following officials are included: law enforcement officer, employee of the Department of Correction, jailer, firemen, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, witness or former witness against the defendant. N.C. Gen. Stat. § 15A-2000(e)(8).

2. Only the following officials are included: law enforcement officer, employee of the Department of Correction, jailer, firemen, judge or justice, former judge or justice, prosecutor or former prosecutor, juror or former juror, witness or former witness against the defendant. N.C. Gen. Stat. § 15A-2000(e)(8).