

INSTRUCTIONS REGARDING AGGRAVATING FACTORS

I. [TO BE GIVEN IN NON-BIFURCATED TRIAL BEFORE GUILT DELIBERATION]

A. If after consideration of the guilt of the defendant you find him guilty of any crime, you shall then consider whether the state has proven beyond a reasonable doubt the existence of an aggravating factor. An aggravating factor is a substantial and compelling reason justifying an exceptional sentence that the court could impose.

B. The State alleges the existence of this [these] aggravating factor[s]: _____.
You are to consider all the evidence you have heard to determine whether any aggravating factor exists. The State has the burden of proving beyond a reasonable doubt to each of you the existence of this [these] aggravating factor[s] before you can find its existence. The phrase "reasonable doubt" means the same thing as I have previously defined. If, after considering all the evidence each and every one of you are convinced of the existence of any aggravating factor[s] beyond a reasonable doubt, then it will be your duty to find that an aggravating factor exists. However, if you have a reasonable doubt about its existence, you must find that aggravating factor does not exist. You may find the existence of all, some or none of the aggravating factors I have listed.

C. The evidence upon which a reasonable doubt about an aggravating circumstance may be based is the evidence you have heard during this trial. The defendant does not have to disprove anything about an aggravating circumstance. The burden is wholly upon the State to prove such a circumstance beyond a reasonable doubt. A reasonable doubt about an aggravating circumstance may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.

D. In determining whether an aggravating factor exists, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict should be based upon the evidence and testimony you have seen and heard and the law on which I have instructed you. You are not to concern yourselves with the sentence length or the disposition of the case as they are matters for the court.

E. I will provide you with a Special Verdict Form. Complete this form only if you find the defendant guilty. There is a form for each possible aggravating factor.

[READ FORM AND PROVIDE IT TO JURY]

[SAMPLE: Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt the existence of the aggravating factor, _____?]

Circle one: Yes No

Signature of Foreperson]

II. [TO BE GIVEN IN BIFURCATED TRIAL BEFORE GUILT DELIBERATION]

A. INSTRUCTION BEFORE PENALTY PHASE BEGINS

1A. [TO BE GIVEN TO JURY THAT DECIDED GUILT]

Ladies and gentlemen of the jury, you have found the defendant guilty of _____.

1B. [TO BE GIVEN TO A JURY THAT DID NOT DECIDE GUILT]

Ladies and gentlemen of the jury, in a separate proceeding the defendant has been found guilty of _____.

2. In this proceeding, you will not concern yourself with the question of guilt but rather with whether the State has proven beyond a reasonable doubt the existence of an aggravating factor. An aggravating factor is a substantial and compelling reason justifying an exceptional sentence that the court could impose. You are to consider the evidence you have already heard in the guilt phase, as well as the evidence you are about to hear to determine whether any aggravating factor exists. At the conclusion of the taking of the evidence and after argument of counsel, you will be further instructed.

B. INSTRUCTION AFTER CLOSING ARGUMENT

1. Ladies and gentlemen of the jury, it is now your duty to find whether any aggravating factor exists. An aggravating factor is a substantial and compelling reason justifying an exceptional sentence that the court could impose.

2. The State alleges the existence of this[these]aggravating factor[s]: _____.

You are to consider all the evidence you have heard to determine whether any aggravating factor exists. The State has the burden of proving beyond a reasonable doubt to each of you the existence of this [these] aggravating factor[s]before you can find its existence. The phrase "reasonable doubt" means the same thing as I have previously defined. **[IF NEW JURY, INSERT DEFINITION OF REASONABLE DOUBT HERE.]** If, after considering all the evidence each and every one of you are convinced of the existence of any aggravating factor[s] beyond a reasonable doubt, then it will be your duty to find that an aggravating factor exists. However, if you have a reasonable doubt about its existence, you must find that aggravating factor does not exist. You may find the existence of all, some or none of the aggravating factors I have listed.

3. The evidence upon which a reasonable doubt about an aggravating circumstance may be based is the evidence you have heard during this trial. The defendant does not have to disprove anything about an aggravating circumstance. The burden is wholly upon the State to prove such a circumstance beyond a reasonable doubt. A reasonable doubt about an aggravating circumstance may arise from all the evidence, from any part of the evidence, or from a lack or failure of the evidence.

4. In determining whether an aggravating factor exists, you must avoid any influence of passion, prejudice, or any other arbitrary factor. Your deliberation and verdict should be based upon the evidence and testimony you have seen and heard and the law on which I have instructed you. You are not to concern yourselves with the sentence length or the disposition of the case as they are matters for the court.

5. I will provide you with a Special Verdict Form. Complete this form only if you find the defendant guilty. There is a form for each possible aggravating factor.

[READ FORM AND PROVIDE IT TO JURY]
[SAMPLE: Do you unanimously agree that the State of Alabama has proven beyond a reasonable doubt the existence of the
aggravating factor, _____?

Circle one: Yes No

Signature of Foreperson]