INSANITY DEFENSE.

NOTE WELL: Give this instruction only when there is some evidence that the defendant may have been legally insane when the offense was committed.[1]

Also add the following at the end of the verdict form: "Special Issue: Did you find the defendant not guilty because you were satisfied that he was insane?

ANSWER: _____"

Give the following just before the mandate of the instruction on the offense charged:

When there is evidence which tends to show that the defendant was legally insane at the time of the alleged offense, you will consider this evidence only if you find that the State has proved beyond a reasonable doubt each of the things about which I have already instructed you. Even if the State does prove each of these things beyond a reasonable doubt, the defendant would nevertheless be not guilty if he was legally insane at the time of the alleged offense.[2]

I instruct you that sanity or soundness of mind is the natural and normal condition of people. Therefore, everyone is presumed sane until the contrary is made to appear.

The test of insanity as a defense is whether the defendant, at the time of the alleged offense, was laboring under such a defect of reason, from disease or deficiency of the mind, as to be incapable of knowing the nature and quality of the act or, if the defendant did know this, whether the defendant was, by reason of such defect of reason, incapable of distinguishing between right and wrong in relation to that act.[3] This defense consists of two things. First, the defendant must have been suffering from a disease or defect of the

---

1. S v. Jones, 293 N.C. 413, 425-426 (1977) (no error to refuse to instruct on insanity when there is no evidence of such). It is the defendant's state of mind at the time of the alleged crime, and not at the time of the trial, that determines whether he is not guilty by reason of insanity. His state of mind at the time of the trial (assuming he is competent to stand trial) becomes relevant only after he is found not guilty by reason of insanity. Then it becomes the subject of the civil commitment proceeding provided for in G.S. 15A-1321 and 15A-1322 and explained at pages 5-6 of this Instruction.

2. S v. Swink, 229 N.C. 123 (1948); S v. Silvers, 323 N.C. 646 (1989).

3. S v. Jones, 293 N.C. 413, 425 (1977).

INSANITY DEFENSE. (*Continued*)

defendant's mind at the time of the alleged offense. Second, this disease or defect must have so impaired the defendant's mental capacity that the defendant either did not know the nature and quality of the act as the defendant was committing it, or, if the defendant did, that the defendant did not know that this act was wrong. (On the other hand, it need not be shown that the defendant lacked mental capacity with respect to all matters. A person may be sane on every subject but one, and yet if the defendant's mental disease or defect with respect to that one subject renders the defendant unable to know the nature and quality of the act or to know that the act with which the defendant was charged was wrong, the defendant's is not guilty by reason of insanity.)

Since sanity or soundness of mind is the natural and normal condition of people, everyone is presumed to be sane until the contrary is made to appear.[4] This means that the defendant has the burden of proof on the issue of insanity. However, unlike the State, which must prove all the other elements of the crime beyond a reasonable doubt, the defendant need only prove the defendant's insanity to your satisfaction.[5] That is, the evidence taken as a whole must satisfy you, not beyond a reasonable doubt but simply to your satisfaction, that the defendant was insane at the time of the alleged offense. In making this determination, you must consider all of the evidence before you which has any tendency to throw any light on the mental condition of the defendant, including (lay testimony reciting irrational or rational behavior of the defendant before, during, or after the alleged offense), (opinion evidence by [lay] (and) [expert] witnesses), (evidence of court

4. S v. Leonard, 296 N.C. 58 (1978). No error to include reference to the presumption of sanity in the instruction. See also S v. Avery, 315 N.C. 1 (1985).

5. S v. Hammonds, 290 N.C. 1. 6 (1976), citing numerous earlier cases approving virtually this exact phrasing. See also, S v. Ward, 301 N.C. 469 (1980) and S. v. Prevatte, ___ N.C. ___, 570 S.E.2d 440 (2002).

INSANITY DEFENSE. (*Continued*)

orders declaring the defendant mentally incapacitated), (other evidence admitted).[6] None of these things is conclusive, but all are circumstances to be considered by you in reaching your decision. If you are not satisfied as to the insanity of the defendant, the defendant is presumed to be sane and you would find the defendant guilty.[7]

NOTE WELL: Incorporate instructions on insanity into the mandate of the instruction on the offense charged, as follows:

(1) Each time you come to the phrase, ". . . , it would be your duty to return a verdict of guilty of (the offense charged or a lesser included offense)", add the phrase, ". . . , unless you are satisfied that the defendant was insane at that time."[8]

(2) At the end of the mandate, insert the following as the final sentence: "It would be your duty to return a verdict of not guilty if you are satisfied by the evidence that the defendant was suffering from a [disease] [defect] of the mind at the time of the alleged act and that this [disease] [defect] so impaired the defendant's mental capacity that the defendant either did not know the nature and quality of the act as the defendant was committing it, or if he did, that the defendant did not know that this act was wrong."

NOTE WELL: Concluding Instruction and Verdict Form.

Insert the following language in N.C.P.I.--Crim. 101.35, on page 2, before the first "NOTE WELL".

"If you return a verdict of guilty, you will not answer the special issue on the verdict form. If you find the defendant not guilty for any reason, you will return a verdict of not guilty and will so indicate on the form. If you return a verdict of not guilty, you must also answer the special issue, which asks whether you found the defendant not guilty because you were satisfied that the defendant was insane. If you found the defendant not guilty because you were satisfied that the defendant was insane, answer, "Yes"; if you were not so

6. See G.S. 8C-1 Rule 701 and 702.
7. See S v. Adcock, 310 N.C. 1, 25-26 (1984).
8. See S v. Leonard (II), 300 N.C. 223, 235-237 (1980).

INSANITY DEFENSE. (*Continued*)

satisfied, answer "No."[9] Your decision on this issue as on all issues must be unanimous."

INSTRUCTIONS ON COMMITMENT PROCEDURE

NOTE WELL: Upon request, a defendant who interposes a defense of insanity is entitled to an instruction setting out in substance the commitment procedures now provided for in G.S. 15A-1321 and 15A-1322. S v. Hammonds, 290 N.C. 1, 15 (1976); see also, S v. Bundridge, 294 N.C. 45, 53-54 (1978).

A defendant found not guilty by reason of insanity shall immediately be committed to a State mental facility.[10] After the defendant has been automatically committed, the defendant shall be provided a hearing within 50 days.[11] At this hearing the defendant shall have the burden of proving by a preponderance of the evidence that the defendant no longer has a mental illness or is no longer dangerous to others.[122] If the court is so satisfied, it shall order the defendant discharged and released. If the court finds that the defendant has not met the defendant's burden of proof, then it shall order that inpatient commitment continue for a period not to exceed 90 days. This involuntary commitment will continue, subject to periodic review, until the court finds that the defendant no longer has a mental illness or is no longer dangerous to others.

9. This instruction is virtually mandated by S v. Linville, 300 N.C. 135, 142 (1980).
10. G.S. 15A-1321.
11. G.S. 122C-268.1 (as amended, 1992).
12. Foucha v. Louisiana, 504 U.S. 71, (1992).